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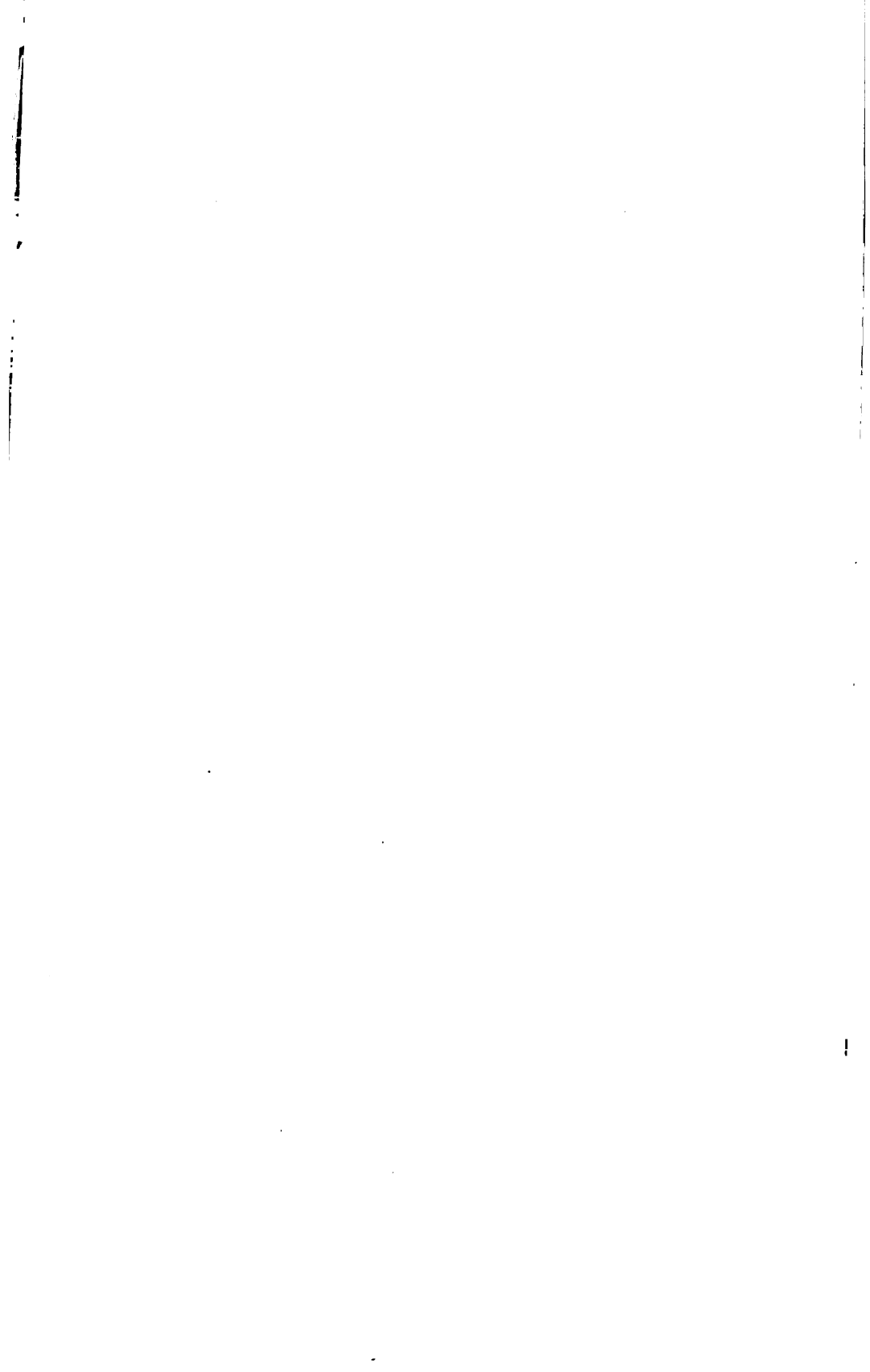


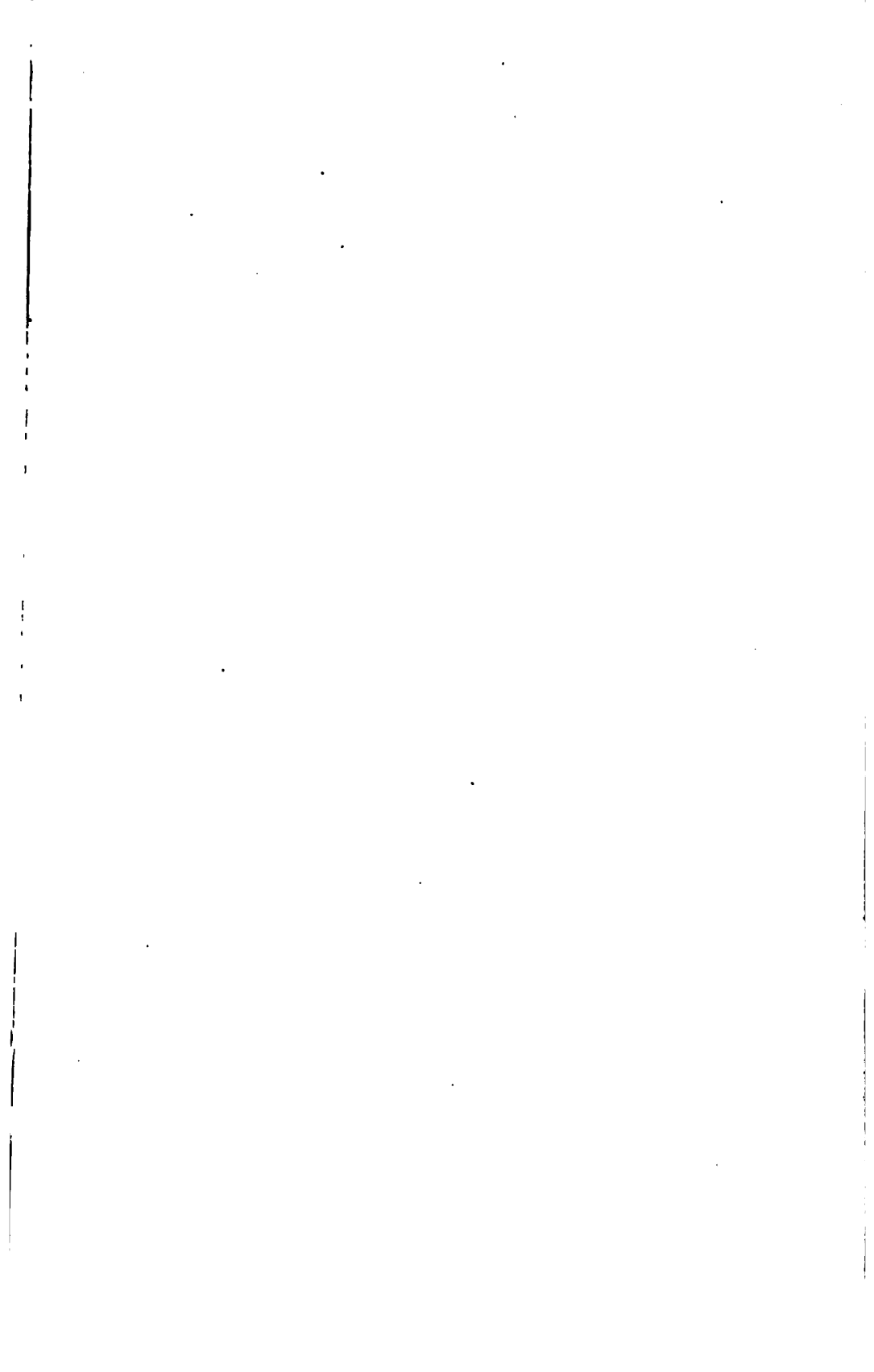
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*New York (State) Laws - statutes.
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BANKING LAW^{o*}

OF

NEW YORK

CHAPTER 2 OF CONSOLIDATED LAWS

CHAPTER 369, LAWS OF 1914

WITH

NOTES, ANNOTATIONS AND REFERENCES

BY

GEORGE WILSON MORGAN

OF THE NEW YORK BAR

AND

AMASA J. PARKER, JR.

OF THE ALBANY BAR

THE BANKS LAW PUBLISHING CO.

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H.S.

TO
GEORGE C. VAN TUYL, JR.
AND
A. BARTON HEPBURN,

TO WHOM THE STATE OF NEW YORK IS INDEBTED FOR
THEIR FORESIGHT AND ENERGY IN CONCEIVING AND
EXECUTING THE PRESENT REVISION OF THE BANKING
LAWS.

[iii]



PREFACE.

The present Banking Law (chapter 369 of the Laws of 1914) was submitted to the Legislature by the Van Tuyl-Hepburn Banking Commission on February 25, 1914, introduced as a legislative bill by Senator Henry W. Pollock and Assemblyman Simon L. Adler on February 26th, unanimously passed, with slight modifications, by a Democratic Senate and a Republican Assembly on March 25th, and signed by Governor Martin H. Glynn on April 16th.

This law represents the results of the work of the Commission to Revise the Banking Law, appointed by Superintendent of Banks George C. Van Tuyl, Jr., pursuant to chapter 705 of the Laws of 1913, as amended by chapter 3 of the Laws of 1914. The Commission was composed largely of men of wide banking experience, who wisely selected as Chairman, Mr. A. Barton Hepburn. Under Mr. Hepburn's leadership, criticisms of the old law and suggestions for the revision were invited from all who were subject to the provisions of the then existing banking statutes, and from many students of financial problems. Valuable assistance was rendered to the Commission by the various State banking associations, by the State Savings and Loan Association, and by public spirited citizens who had made a special study of the problems relating to small loans. Many of the changes both of form and substance were suggested by Mr. George I. Skinner, First Deputy Superintendent of Banks, who was associated with the writer as counsel to the Commission. Mr. Skinner's exhaustive knowledge of the practical workings of our banking laws gained through an experience in the Banking Department extending over a period of seventeen years was invaluable to the Commission, and contributed largely to the united support given to the bill by the banking community of the State.

The substantive changes in the present revision are noted under the text where such changes occur. Many changes largely formal have been made for the purpose of unifying the arrangement of the various articles. The powers and duties of the Superintendent of Banks have been gathered together in article II. By unifying the manner of organizing corporations under the Banking Law, of supervising them and the individuals within its provisions, and of reporting to the Superintendent, departmental administration has been greatly simplified. Each article, so far as it relates to beginning business and continuing as a going concern, is complete in itself. The advantage of this arrangement to the banker or person engaged in the business and subject to the provisions of the Banking Law, is obvious. The manner of voluntarily discontinuing business and the merger of this class of corporations is contained in article XII.

For the first time, certain classes of private bankers have been brought under the supervision of the Superintendent of Banks (article IV), and a beginning has been made toward protecting small savings accounts received by individuals (see note to § 150). The making of small loans by individuals at interest in excess of six per centum per annum has also been brought under supervision by provisions contained in article IX. Sections 375 to 438 of article X provide for the incorporation by savings and loan associations of a land bank, patterned after the German *landschaften*. It is hoped that the securities to be issued by this corporation will help to solve the problem of mobilizing rural credits.

The scholarly work of Mr. Edward A. Craighill, Jr., and Mr. Hiram Thomas of Breed, Abbott & Morgan, has contributed materially both to the revision of the Banking Law and to whatever virtues this book may possess.

GEORGE WILSON MORGAN.

32 Liberty Street,
New York City.
May 12, 1914.

BANKING LAW

CHAPTER 369 OF 1914.

With Amendments 1916

AN ACT in relation to banking corporations, and individuals, partnerships, unincorporated associations and corporations under the supervision of the banking department, constituting chapter two of the consolidated laws.

APPROVED by the Governor April 16, 1914. Passed, three-fifths being present.

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

CHAPTER 2 OF THE CONSOLIDATED LAWS.

BANKING LAW.

Article I. Short title; definitions (§§ 1-3).

II. Banking department; powers and duties of superintendent and other officers (§§ 10-83).

III. Banks (§§ 100-148).

IV. Private bankers (§§ 150-172).

V. Trust companies (§§ 180-223).

VI. Savings banks (§§ 230-281).

VII. Investment companies (§§ 290-309).

VIII. Safe deposit companies (§§ 315-331).

IX. Personal loan companies and personal loan brokers (§§ 340-371).

X. Savings and loan associations; land bank of the state of New York (§§ 375-438).

XI. Credit unions (§§ 450-479).

XII. Forfeiture of corporate existence by non-user; voluntary dissolution and merger of corporations (§§ 485-496).

XIII. Laws repealed; construction; when to take effect (§§ 500-502).

ARTICLE I.

Short title and definitions.

Section 1. Short title.

2. Definitions of persons.

3. Definitions of terms used.

§ 1. Short title.

This chapter shall be known as the "banking law," and shall be applicable to all corporations and individuals defined in the

next section and to such other corporations and individuals as shall subject themselves to special provisions thereof, or who shall, by violating any of its provisions, become subject to the penalties provided therein.

Source.—Former § 1.

Jurisdiction specifically broadened by amendment so as to include others than those enumerated in § 2; i. e., those who shall “subject themselves to special provisions thereof” and those “subject to the penalties provided therein.”

§ 2. Definitions of persons to whom chapter is applicable.

Bank. The term, “bank,” when used in this chapter, unless a different meaning appears from the context, means any domestic moneyed corporation, other than a trust company, authorized to discount and negotiate promissory notes, drafts, bills of exchange and other evidences of debt; to receive deposits of money and commercial paper; to lend money on real or personal security; and to buy and sell gold and silver bullion, foreign coins or bills of exchange.

Individual banker. The term, “individual banker,” when used in this chapter, means any individual, partnership or unincorporated association, heretofore authorized by the superintendent of banks to engage in the business of banking pursuant to the banking law.

Private banker. The term, “private banker,” when used in this chapter, means an individual, other than an individual banker, who, by himself, or as a member of a partnership or unincorporated association other than an unincorporated express company having a contract with a railroad company or railroad companies for the operation of an express service upon the lines thereof, is engaged in the business of receiving deposits subject to check or for repayment upon the presentation of a pass book, certificate of deposit or other evidence of debt, or upon the request of the depositor, or in the discretion of such individual, partnership or unincorporated association; of receiving money for transmission; of discounting or negotiating promissory notes, drafts, bills of exchange or other evidences of debt; of buying or selling exchange, coin or bullion; or is engaged in the business of transacting any part of such business. The term, “private banker,” when so used, shall include the executor or administrator

of a deceased private banker and a partnership or unincorporated association of private bankers.

Trust company. The term, "trust company," when used in this chapter, means any domestic corporation formed for the purpose of taking, accepting and executing such trusts as may be lawfully committed to it, acting as trustee in the cases prescribed by law, receiving deposits of money and other personal property, and issuing its obligations therefor, and lending money on real or personal securities.

Savings bank. The term, "savings bank," when used in this chapter, means a corporation authorized by the laws of this state only to receive money on deposit in such sums, to invest the same in such securities, obligations and property, and to declare, credit and pay from its earnings such dividends, as may be prescribed by law.

Investment company. The term, "investment company," when used in this chapter, means any corporation other than an insurance corporation formed under the laws of this state or of any other state, and doing business in this state for the purpose of selling, offering for sale, or negotiating to individuals other than bankers bonds or notes secured by deed of trust or mortgages on real property or choses in action, owned, issued, negotiated or guaranteed by it, or for the purpose of receiving any money or property, either from its own members or from other persons, and entering into any contract, engagement or undertaking with them for the withdrawal of such money or property at any time with any increase thereof, or for the payment to them or to any person of any sum of money at any time, either fixed or uncertain.

Safe deposit company. The term, "safe deposit company," when used in this chapter, means every domestic corporation formed for the purpose of taking and receiving as bailee for safe-keeping and storage, jewelry, plate, money, specie, bullion, stocks, bonds, securities and valuable papers of any kind and other valuable personal property, on deposit and guaranteeing their safety upon such terms and for such compensation as may be agreed upon by the company and the respective bailors thereof, and to rent vaults and safes and other receptacles for the purpose of such safe-keeping and storage.

Personal loan company. The term, "personal loan company," when used in this chapter, means any corporation organized under

chapter three hundred twenty-six of the laws of eighteen hundred ninety-five, as amended by chapter seven hundred six of the laws of eighteen hundred ninety-five, chapter two hundred six of the laws of eighteen hundred ninety-six, chapter seventy-eight of the laws of nineteen hundred two, and chapter three hundred thirty-three of the laws of nineteen hundred five, article ten of chapter six hundred eighty-nine of the laws of nineteen hundred nine, or article nine of this chapter, and authorized by the superintendent of banks to engage in the business of making small loans to needy borrowers not exceeding two hundred dollars to any individual at any one time at interest exceeding the rate of six per centum per annum, pursuant to the provisions of this chapter.

Personal loan broker. The term, "personal loan broker," when used in this chapter, means any individual, who, by himself, or as a member of a partnership or unincorporated association, is authorized by the superintendent of banks to engage in the business of making small loans to needy borrowers not exceeding two hundred dollars to any individual at any one time at interest exceeding the rate of six per centum per annum, pursuant to the provisions of this chapter. The term, "personal loan broker," when so used, includes any partnership or unincorporated association of personal loan brokers.

Savings and loan association. The term, "savings and loan association," when used in this chapter, means a domestic moneyed but non-stock corporation formed for the purpose of encouraging industry, frugality, home-building, the saving of money by its members, the accumulation of savings, the lending of such accumulations to its members, and the repayment to each member of his savings when they have accumulated to a certain sum, or at any time when he shall desire the same, or the association shall desire to repay the same. The term, "savings and loan association," shall include every corporation, company or association doing business in this state and having for a part of its title or name the words "building association," "building and loan association," "building and mutual loan association," "savings and loan association," "savings association," "co-operative loan association," or "co-operative bank," and every corporation, company or association whose shares are wholly or in part payable by a cumulative fund in regular or periodical instalments, or which is doing busi-

ness in the form and of a character similar to that authorized by this chapter organized or incorporated in this state.

Land bank of the state of New York. The term "land bank of the state of New York," when used in this chapter, means a domestic moneyed but non-stock co-operative corporation for savings, the membership of which is composed of "savings and loan associations," doing business in pursuance of the provisions of article ten of this chapter, for the purpose of issuing and redeeming debenture bonds secured by first mortgages pledged by its members, and for otherwise promoting their interests.

Credit union. The term, "credit union," when used in this chapter, means a domestic moneyed but non-stock corporation organized under article eleven of chapter six hundred eighty-nine of the laws of nineteen hundred nine, as amended by chapter five hundred eighty-two of the laws of nineteen hundred thirteen, or article eleven of this chapter, for the purpose of promoting thrift among its members and of making loans to its members at reasonable rates with or without security.

Source.—Former § 2 with alterations and additions.

BANK.—Much of the altered language of this definition was taken from subdivision 1 of former § 66 relating to the powers of banks. The words "real or" are new. The power to issue circulation has been omitted owing to the federal tax on state bank circulation, and to the currency features of the federal reserve act—of which member state banks may take advantage.

INDIVIDUAL BANKER.—The present law makes no provision for individual bankers not already engaged in business; but the rights of those engaged in business at the time the act took effect are preserved by § 143. At that time only one individual banker was engaged in business in the state.

Under the former law the term meant a person who had complied with the requirements of law and was authorized by the banking department to engage in the business of banking, and was subject to the banking law and the supervision of the superintendent of banks. *People v. Doty*, 80 N. Y. 225; *Perkins v. Smith*, 116 N. Y. 441; *People v. Young*, 207 N. Y. 522, 528; *Hall v. Baker*, 66 App. Div. 131.

This is the meaning of the term as used in § 14 of the Tax Law (*post*). Atty.-Gen. Rep. (1910) 670.

PRIVATE BANKER.—This definition is new. Until the passage of the present law no private bankers were subject to the supervision of the superintendent of banks. See note to § 150.

Previous to that time the term had a well-recognized meaning, viz., a person or firm engaged in the banking business without authority from the

banking department and not subject to the banking law or the supervision of the superintendent of banks. *People v. Doty*, 80 N. Y. 225. *Perkins v. Smith*, 116 N. Y. 441; *People v. Young*, 207 N. Y. 522, 528; *Hall v. Baker*, 66 App. Div. 131.

TRUST COMPANY.—This definition is identical with that contained in former § 2.

SAVINGS BANK.—Former definition revised so as to negative more clearly implied powers. "Dividends" has been substituted for "interest" in referring to earnings credited to depositors.

INVESTMENT COMPANY.—This definition differs from that of "Mortgage, Loan, or Investment Corporation" contained in former § 2 in that the words "to individuals other than bankers" have been inserted. The purpose of the insertion was to exclude from the operation of the act corporations which do not sell to the public. The clause defining foreign associations and individuals as foreign corporations has been omitted because the purpose of its inclusion was in conflict with the federal constitution.

Opinion that a corporation which receives money, accumulates and agrees to pay back is under the supervision of the banking department. *Atty.-Gen. Rep.* (1896) 208.

As to the right of corporations organized under the Business Corporations Law to exercise investment company powers, see *post*, notes to §§ 293, 309.

SAFE DEPOSIT COMPANY.—Identical with the definition in former § 2.

PERSONAL LOAN COMPANY.—This differs slightly in language from the definition of "Personal Loan Association" in former § 2. The amendment expresses the special power possessed by such corporations to charge interest in excess of six per centum per annum.

PERSONAL LOAN BROKER.—New. Such brokers were not regulated under the former Banking Law. See note under § 359.

SAVINGS AND LOAN ASSOCIATION.—The first sentence of this definition varies but slightly from that contained in former § 2, the principal change being the insertion of the words "domestic moneyed but non-stock." The second sentence is identical in substance with former § 238, except no provision is made for foreign corporations or associations not already engaged in business in the state when the present law took effect.

LAND BANK OF THE STATE OF NEW YORK.—New. See note to § 450.

CREDIT UNION.—Practically the same as the definition in former § 2. Words "domestic moneyed but non-stock" inserted.

§ 3. Definitions of terms used in chapter.

Guaranty fund. The term "guaranty fund," when used in this chapter, means a fund created by a mutual non-stock corporation to which this chapter is applicable and pursuant to its provisions, from its earnings or from contributions, which is not available for the payment of expenses, so long as such corporation has any undivided profits, or for the payment of dividends, and against which losses upon its investments, whether resulting from depreciation in the value of its securities or otherwise, may be charged, without encroaching upon its undivided profits or net earnings, until such guaranty fund is exhausted.

Surplus. The term, "surplus," when used in this chapter, means the excess of assets over liabilities including liability to stockholders.

Surplus fund. The term, "surplus fund," when used in this chapter, means a fund created pursuant to the provisions of article three or five of this chapter by a bank or trust company from its net earnings or undivided profits, which to the amount specified in such articles is not available for the payment of dividends and cannot be used for the payment of expenses or losses so long as any such corporation has undivided profits.

Total profits. The term, "total profits," when used in this chapter, means the total amount of undistributed net earnings of any corporation to which this chapter is applicable from the date of its organization, including such portions of its surplus fund or guaranty fund as have been derived from net earnings or from undivided profits.

Undivided profits. The term, "undivided profits," when used in this chapter, means the credit balance of the profit and loss account of any corporation to which this chapter is applicable.

Net earnings. The term, "net earnings," when used in this chapter, means the excess of the gross earnings of any corporation to which this chapter is applicable over expenses and losses chargeable against such earnings during any dividend period.

Dividend period. The term, "dividend period," when used in this chapter, means the period from the date as of which the last dividend of any corporation to which this chapter is applicable was declared to the date selected for the declaration of the next

dividend; or the period from the date when its corporate existence began to the date as of which the first dividend is declared.

Time deposits. The term, "time deposits," when used in this chapter, means all deposits the payment of which cannot legally be required within thirty days.

Demand deposits. The term, "demand deposits," when used in this chapter, means deposits payment of which can legally be required within thirty days.

Aggregate demand deposits. The term "aggregate demand deposits," when used in this chapter, means the deposits against which reserves must be maintained, by banks, trust companies and private and individual bankers and includes total deposits, all amounts due to banks, bankers, trust companies and savings banks, the amounts due on certified and cashiers' checks, and for unpaid dividends, less the following items:

Total time deposits:

Deposits secured by the deposit of outstanding unmatured stocks, bonds or other obligations of the state or city of New York;

Deposits to an amount not exceeding either the market or par value of outstanding unmatured stocks, bonds or other obligations of the state or city of New York owned and held by such corporation or banker;

The amounts due it on demand from banks, bankers and trust companies other than its reserve depositaries, including foreign exchange balances credited to it and subject to draft;

The excess due it from reserve depositaries over the amount required to maintain its total reserves.

Reserves on hand. The term, "reserves on hand," when used in this chapter, means the reserves against deposits kept in the vault of any individual or corporation pursuant to the provisions of this chapter.

Reserves on deposit. The term, "reserves on deposit," when used in this chapter, means the reserves against deposits maintained by any individual or corporation pursuant to this chapter in reserve depositaries, or in a federal reserve bank of which such corporation is a member, and not in excess of the amount authorized by this chapter.

Total reserves. The term, "total reserves," when used in this chapter, means the aggregate of reserves on hand and reserves on deposit maintained pursuant to the provisions of this chapter.

Reserve depositary. The term, "reserve depositary," when used in this chapter, means a bank, trust company or banking corporation designated by the superintendent of banks as a depositary for reserves on deposit.

Stockholder. The term, "stockholder," when used in this chapter, unless otherwise qualified, means a person who appears by the books of a stock corporation to be the owner and holder of one or more shares of the stock of such corporation.

Shareholder. The term, "shareholder," when used in this chapter, means a member of a savings and loan association, land bank or credit union.

Population. The term, "population," when used in this chapter, means population as determined by the last state or federal enumeration; or when used in connection with the words "unincorporated village," as determined by the superintendent of banks from the best available sources of information.

Source.—New. None of these terms was defined in the former law except "stockholder."

AGGREGATE DEMAND DEPOSITS.—The amount of deposits against which reserves were required to be carried under the former law (Banks, § 67; Trust Companies, § 198) excluded "an amount equal to the market value, but not exceeding the par value" of obligations of the State or City of New York owned by such institution, but held by public officers in trust for such institution. This provision has been eliminated in the new law by the definition of aggregate demand deposits, and only the value of such items may be excluded as are owned and held by such institution. Bank credits receivable on demand in excess of the amount of its total reserves maintained as reserves on deposit may also be excluded.

STOCKHOLDER.—The definition in former § 2 included not only holders of record but all other legal and equitable owners, with the exception of certain pledgees. Such definition has formed originally part of a section fixing the liability of stockholders to creditors of the corporation and should have been left there. As to who are liable under the present law as stockholders of banks, see § 120; of trust companies, see § 206; of safe deposit companies, see § 322.

The term "stockholder" as used in former § 38 (new § 496) meant the actual owner of the stock. Matter of Rogers, 102 App. Div. 466. Under the present definition, the proceeding provided for by that section can only be taken by the holder of record.

SHAREHOLDER.—Members of these corporations are not "stockholders" in the ordinary sense. Their status is more nearly analogous to that of depositors in savings banks. Atty.-Gen. Rep. (1910), 841.

ARTICLE II.**Banking department; powers and duties of superintendent.****Section 10. Banking department; superintendent.**

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68. Effect of notice on bailment contract.
69. Liquidation and conservation of assets.
70. Deposit of moneys collected.
71. Superintendent's powers to act for delinquent.
72. Notice to creditors.
73. Listing claims.
74. Objections to claims.
75. Acceptance or rejection of claims.
76. Effect of acceptance.
77. Judgments against delinquent not liens.
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79. Stockholders' meeting.
80. Enforcement of stockholders' liability.
81. Actions against directors, trustees or officers.
82. Public information as to department.
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§ 10. Banking department; superintendent; appointment; term of office; qualifications; compensation; oath; bond.

There shall continue to be a banking department charged with the execution of the laws relating to the individuals, partnerships, unincorporated associations and corporations to which this chapter is applicable. The chief officer of such department shall continue to be known as the superintendent of banks. He shall have supervision of every such individual, partnership, unincorporated association and corporation, and shall exercise such powers and perform such duties as are conferred and imposed upon him by this chapter or by any law of this state.

The superintendent of banks shall be appointed by the governor, by and with the advice and consent of the senate, and after the termination of the term of office of the incumbent at the time this act takes effect shall hold his office for the term of three years, beginning on the first day of July succeeding his appointment and ending on the first day of July in the third calendar year thereafter, provided that the term of office of the superintendent appointed to succeed the superintendent who was in office on the first day of January, nineteen hundred and fourteen, shall continue until the first day of July, nineteen hundred and seventeen, and that a vacancy in such office shall be filled only for the balance of the unexpired term. The superintendent shall not, either directly or indirectly, be interested in any corporation to which this chapter is applicable, or engage in business as a private banker or personal loan broker. After the termination of the term of office of the incumbent at the time this act takes effect, the superintendent of banks shall receive an annual salary of ten thousand dollars, to be paid monthly. The superintendent shall, within fifteen days from the time of notice of his appointment, take and subscribe the constitutional oath of office and file the same in the office of the secretary of state, and execute to the people of the state a bond in the sum of fifty thousand dollars, with two or more sureties to be approved by the comptroller and treasurer of the state, conditioned for the faithful discharge of the duties of his office.

Source.—Former § 3..

Oath of office, see Constitution, Art. 13, § 1.

Official bonds, see Pub. Off. Law, §§ 11, 12.

Disqualification of superintendent to serve on jury, see Judiciary Law, § 503.

APPOINTMENT TO FILL VACANCY.—One appointed to fill the vacancy created by the resignation of the Superintendent of Banks held office for the balance of the unexpired term. Atty.-Gen. Rep. (1896) 86.

AN ASSIGNMENT FOR THE BENEFIT OF CREDITORS by a corporation organized under the banking law does not limit or interfere with the superintendent's powers over such corporation. Atty.-Gen. Rep. (1901) 265.

§ 11. Official seal of superintendent; sealed instruments to be received in evidence and recorded.

The secretary of state shall provide the superintendent of banks with an official seal. Every paper executed by him as such super-

intendent in pursuance of any authority conferred on him by law, and sealed with his seal of office, shall be received in evidence, and may be recorded in the proper recording offices in the same manner and with the same effect as a deed regularly acknowledged.

Source.—Former § 4.

Form of seal, see State Law, §§ 70-74; Pub. Off. Law, § 40.

Sealed documents as evidence, see Code Civ. Proc., § 933.

§ 12. Offices and furniture.

The trustees or other officers having by law the custody of the public buildings at the state capital, shall assign to the superintendent suitable rooms therein for conducting the business of the banking department. The superintendent shall, from time to time, furnish the necessary furniture, stationery, fuel, lights and other proper conveniences for the transaction of such business.

Source.—Former § 6.

§ 13. Deputies, clerks, examiners, special agents and other employees; appointment; compensation; oath of office.

The superintendent may appoint a first, a second, a third, and a fourth deputy, and shall employ from time to time such clerks, examiners, special agents and other employees as he may need to discharge in a proper manner the duties imposed upon him by law. They shall perform such duties as the superintendent shall assign to them and their compensation shall be fixed by him and paid monthly. Every deputy shall, within fifteen days after notice of his appointment, take and subscribe the constitutional oath of office, and file the same in the office of the secretary of state. Every examiner shall, before entering upon his duties as such examiner, take and subscribe the constitutional oath of office and file the same in the office of the clerk of the county where he resides.

Source.—Former § 5.

Amended by L. 1915, chap. 588. In effect May 10, 1915.

The provision as to the examiner's oath of office is taken from former § 11. The provisions for the appointment of a fourth deputy and of special agents are new.

Appointment of special deputies to assist in liquidation, see § 62.

Bonds of deputies, see Pub. Off. Law, §§ 11, 12.

Misconduct by officers of Banking Department, see Penal Law, § 300 *post*.

COMPENSATION OF SPECIAL EXAMINER.—Where a special examiner did not apply to the superintendent for a certificate until nearly ten years after the completion of the services, it was held that the Superintendent properly refused on the ground that the claim was barred by lapse of time; also that mandamus did not lie to compel the granting of such certificate, the remedy, if any, being by certiorari. *People v. Preston*, 62 Hun 185, *aff'd* 131 N. Y. 644.

§ 14. Bond of deputy acting as superintendent, when required.

In case of a vacancy in the office of superintendent, or in case of his absence or inability to act, for thirty successive days, none of his deputies shall thereafter act as superintendent, until the first deputy, or if there be a vacancy in the office of first deputy, or he be absent or unable to act, the second deputy or, if there be a vacancy in the office of second deputy, or he be absent or unable to act, the third deputy, or if there be a vacancy in the office of third deputy, or he be absent or unable to act, the fourth deputy, shall have executed to the people of the state a bond in the penalty of fifty thousand dollars, with two sureties to be approved by the comptroller and treasurer of the state, conditioned for the faithful discharge of the duties of the office of superintendent while such deputy acts as such superintendent.

Source.—Former § 5.

§ 15. Restrictions on examiners; penalty.

No examiner shall be appointed receiver of any corporation or private or individual banker or personal loan broker whose books, papers and affairs he shall have examined pursuant to a commission from the superintendent, but he may be appointed by the superintendent a special deputy to assist in the liquidation of any such corporation, banker or broker under section sixty-two of this article. No examiner shall obtain a loan from any individual, partnership, unincorporated association or corporation to which this chapter is applicable, or receive, either directly or indirectly, from any such individual, partnership, unincorporated association or corporation, or from any officer or employee thereof, any sum of

money or other valuable thing by way of gift, credit or otherwise. A violation of the provisions of this section by any examiner shall constitute sufficient grounds for his removal by the superintendent.

Source.—The first clause is taken from former § 11. The rest of the section is new.

Appointment of special deputies, see § 62.

Compensation of examiners acting as special deputies, see § 63.

§ 16. Retirement of deputies, clerks and examiners.

The superintendent may, in his discretion, retire any deputy, clerk or examiner who shall have served in the department for a period of twenty years and who shall have become physically or mentally incapacitated for the further performance of the duties of his position. A person retired from service pursuant to this section shall be paid out of the funds appropriated to the banking department an annual sum, in equal monthly instalments, equal to one-half of the average amount of his annual or per diem salary for the period of two fiscal years preceding the time of such retirement.

Source.—Former § 5a.

§ 17. How expenses of department defrayed; assessments.

All the expenses incurred in and about the conduct of the business of the banking department, including the compensation of the superintendent, his deputies, clerks, examiners, special agents and other employees, shall be paid in the first instance out of the state treasury on the certificate of the superintendent and the warrant of the comptroller.

All general expenses incurred in connection with the supervision of the corporations and private and individual bankers and personal loan brokers required by section forty-two of this chapter to report to the superintendent shall be charged to and paid by such corporations, bankers and brokers in such proportions as the superintendent shall deem just and reasonable.

The expenses incurred and services performed on account of any such corporation, banker or broker, or on account of any foreign corporation or its agency to which this chapter is applicable, shall be charged to and paid by the corporation, banker or broker for whom they were incurred or performed.

If any such corporation, banker or broker shall not, after due notice, pay any such charges, the superintendent may apply thereto the proceeds of the sale of or the interest on any stocks or bonds in his hands, as provided in section thirty-four of this article, or an action may be brought to recover such charges, as provided in section thirty-one of this article.

Source.— Part former § 7. The provision for payment in the first instance out of the state treasury is taken from former § 5.

Proceedings to enforce assessments, see § 31

Assessments entitled to priority, see § 32.

Application of interest on or proceeds of securities in payment of assessments, see § 34.

Assessment as liability of bank, see § 135; of trust company, see § 220; of savings bank, see § 277; of investment company, see § 299; of safe deposit company, see § 330; of personal loan company, § 366.

AFTER A CORPORATION HAS GONE INTO THE HANDS OF RECEIVERS the superintendent cannot make any assessment against it for services thereafter rendered. Atty.-Gen. Rep. (1903) 361.

THE CLAIM OF THE STATE FOR REIMBURSEMENT of expenses incurred, as provided in this section (formerly § 7) does not constitute a preferred claim. Atty.-Gen. Rep. April 4, 1911.

§ 18. Fees for copies and certifications.

For every copy of any paper filed in the banking department and for the certification thereof, except where such copy or certification is made for the benefit of a corporation or private or individual banker or personal loan broker to which this chapter is applicable, the superintendent may charge ten cents per folio, and for affixing his official seal on such copy and certifying the same, one dollar.

Source.— New.

§ 19. All moneys received to be paid into state treasury to reimburse state.

To reimburse the state for advances made by it for the expenses of the banking department the superintendent shall pay into the state treasury monthly all moneys received by him from corporations, private or individual bankers or personal loan brokers, in payment of his charges or assessments against them or of any

penalties or forfeitures incurred by them; all moneys applied by him to the payment of such charges, assessments, penalties or forfeitures from the proceeds of the sale of or the interest on any stocks or bonds in his hands deposited by such corporation, banker or broker which has failed, after due notice, to pay such charges, assessments, penalties or forfeitures; all moneys recovered in actions brought by the attorney-general under section thirty-one of this article; and all fees, perquisites and money received by the banking department, or any salaried officer or employee thereof, from any source whatever, on account of services rendered by the department, or by any such officer or employee in an official capacity. The superintendent shall annually, on or before the close of the fiscal year and before levying an assessment upon such corporations, bankers and brokers to reimburse the state for such advances, pay into the state treasury such interest as shall have accrued upon the balances held by him as trustee for the owners of unclaimed deposits, dividends or interest.

Source.—Part former § 7. Revision eliminates all exceptions and requires all monies to be paid into treasury of state.

§ 20. Notice of intention to organize bank, trust company or savings bank; designation of newspaper.

Upon receipt by the superintendent of a notice of intention to organize a bank, trust company or savings bank, executed in the manner prescribed by this chapter, he shall forthwith designate for the publication of such notice a newspaper published in the village, borough or city, if in a city not divided into boroughs, specified in such notice as the place where the business of the proposed corporation is to be transacted; or if no newspaper is published therein, a newspaper published in the county in which such place is located; or if none is published in such county, then a newspaper published in an adjoining county.

Source.—Part former §§ 61, 131, 181.

As to the notice of intention required to be given in the case of a bank, see § 101; of a trust company, see § 181; of a savings bank, see § 231.

§ 21. Superintendent shall refuse to file defective certificate.

Upon receipt by the superintendent of any organization certificate of a corporation proposed to be organized under this chapter, or any private banker's certificate submitted pursuant to section one hundred fifty-one of this chapter, or any personal loan broker's certificate submitted pursuant to section three hundred fifty-nine of this chapter, if such certificate fails to comply in form or substance with the requirements of this chapter or is not accompanied by such by-laws, affidavits or other documents as are required by this chapter to be attached thereto or filed therewith, or if such by-laws, affidavits or other documents are not in conformity with the requirements of this chapter, the superintendent shall forthwith return such certificate, together with such by-laws, affidavits or other documents, to the proposed incorporators or the private banker or personal loan broker from whom it was received, calling attention to the defect or defects therein, and shall refuse to file such certificate for examination until such defect or defects shall have been remedied and such certificate, by-laws, affidavits or other documents shall have been made to comply in all respects with the requirements of this chapter.

Source.—From former §§ 62, 132, 182.

CROSS-REFERENCES.—For organization certificate of bank, see § 100; of trust company, see § 180; of savings bank, see § 230; of investment company, see § 290; of safe deposit company, see § 315; of personal loan company, see § 340; of savings and loan association, see § 375; of land bank, see § 421; of credit union, see § 450.

NAMES OF INCORPORATORS.—If the organization certificate contain names of proposed incorporators which were not in the notice of intention, the Superintendent should refuse to file it. Atty.-Gen. Rep. (1909) 716.

§ 22. When superintendent shall endorse certificate "filed for examination."

If such organization certificate or private banker's certificate, and such by-laws, affidavits or other documents as are required to be attached thereto or filed therewith, comply, or shall have been so amended as to comply in all respects with the requirements of this chapter, the superintendent shall forthwith endorse upon each

of the duplicates of such certificate over his official signature the words "filed for examination" with the date of such endorsement.

Source.—Part former §§ 62, 132, 182.

§ 23. Investigation by superintendent of proposed corporation, private banker or personal loan broker; refusal or approval; filing certificate.

When any such certificate shall have been filed for examination, the superintendent shall thereupon ascertain from the best sources of information at his command, and by such investigation as he may deem necessary, whether the character, responsibility and general fitness of the person or persons named in such certificate are such as to command confidence and warrant belief that the business of the proposed corporation, private banker or personal loan broker will be honestly and efficiently conducted in accordance with the intent and purpose of this chapter, and whether the public convenience and advantage will be promoted by allowing such proposed corporation, private banker or personal loan broker to engage or continue in business.

In the case of a private banker who has not submitted with his certificate the affidavit specified in section one hundred and sixty of this chapter or whose affidavit has been refused by the superintendent as provided in section twenty-five of this article, the superintendent shall also ascertain in like manner whether the facts stated in such certificate are true.

In the case of a proposed savings bank the superintendent shall also ascertain in like manner whether greater convenience of access to a savings bank will be afforded to any considerable number of depositors by opening a savings bank in the place designated in the certificate, whether the density of the population in the neighborhood of such place and in the surrounding country affords a reasonable promise of adequate support for the proposed savings bank, and whether the contributions to the initial guaranty fund and expense fund have been paid in cash.

After the superintendent shall have satisfied himself by such investigation whether it is expedient and desirable to permit such

proposed corporation, private banker or personal loan broker to engage or continue in business, he shall within sixty days after the date of the filing of such certificate for examination, endorse upon each of the duplicates thereof over his official signature the word "approved" or the word "refused," with the date of such endorsement. In case of refusal he shall forthwith return one of the duplicates, so endorsed, to the proposed incorporators, private banker or personal loan broker from whom such certificate was received. In case of approval he shall forthwith give notice thereof to the proposed incorporators, private banker or personal loan broker and file one of the duplicate certificates in his own office and the other in the office of the clerk of the county in which is located the place of business of such proposed corporation, private banker or personal loan broker.

Source.—Part former §§ 63, 133, 134, 182, 212, 281, 300, 310, 331. The paragraph relating to private bankers is new.

§ 24. Authorization certificate; when and to whom issued; contents; filing and recording.

Before authorizing any corporation, private banker or personal loan broker to begin or continue business the superintendent shall be satisfied that such corporation, banker or broker has in good faith complied with all the requirements of law and fulfilled all the conditions precedent to commencing business imposed by this chapter. In the case of every stock corporation, he shall examine or cause an examination to be made in order to ascertain whether all of its capital stock has been fully paid in cash. In the case of every personal loan broker and of every private banker subject to all the provisions of article four of this chapter, he shall examine or cause an examination to be made in order to ascertain whether there has been invested in such business, or deposited in cash to be invested therein, the amount of permanent capital stated in the certificate of such banker or broker.

If satisfied that such corporation, banker or broker has in good faith complied with all the requirements of law and fulfilled all the conditions precedent to commencing business imposed by this

chapter, the superintendent shall, within six months after the date on which such organization certificate or private banker's or personal loan broker's certificate was filed by him for examination, but in no case after the expiration of that period, issue under his hand and official seal, in triplicate, an authorization certificate to the person or persons named in such organization certificate or private banker's or personal loan broker's certificate. Such authorization certificate shall state that the corporation, private banker or personal loan broker named therein has complied with the provisions of this chapter and with all the requirements of law, that it is authorized to transact within this state the business specified therein, and that such business can safely be intrusted to it. One of the triplicate authorization certificates shall be transmitted by the superintendent to the corporation, private banker or personal loan broker, thereby authorized to commence or continue business, another shall be filed in the office of the superintendent, and the third shall be filed by the superintendent in the county clerk's office wherein the organization certificate of such corporation or the private banker's or personal loan broker's certificate has been filed by him. The superintendent and said county clerk shall respectively attach such authorization certificate to such organization certificate or private banker's or personal loan broker's certificate previously filed in his office and shall record both such certificates in the book of records of incorporation therein.

Source.—Part former §§ 12, 32.

CERTIFICATE.—The Superintendent of Banks has discretion to refuse a certificate of authorization for a state bank of discount. Atty.-Gen. Rep. (1904) 403.

§ 25. Affidavit of private banker; investigation; refusal or acceptance.

Upon receipt by the superintendent of an affidavit submitted by a private banker pursuant to section one hundred and sixty of this chapter, if such affidavit fails to comply in form or substance with the requirements of such section, he shall refuse to file it for examination until the defect or defects therein shall have been

remedied. If such affidavit complies, or shall have been so amended as to comply in all respects with the requirements of such section, he shall forthwith endorse upon each of the duplicates thereof over his official signature the words "filed for examination" with the date of such endorsement. Thereupon he shall, by such investigation as he may deem necessary, satisfy himself whether the facts stated in such affidavit are true. If from such investigation it shall appear to him that any of such statements are untrue, he shall, within thirty days after the date on which such affidavit was endorsed "filed for examination," endorse on each duplicate thereof over his official signature the word "refused" with the date of such endorsement and return one of such duplicates, so endorsed, to the private banker from whom it was received. If the superintendent shall be satisfied that the facts stated in such affidavit are true, he shall, within the time above specified, endorse on each duplicate thereof over his official signature the word "accepted" with the date of such endorsement, and shall forthwith give notice thereof to such private banker and file one of such duplicates in his own office and the other in the office of the clerk of the county in which the certificate of such private banker has been filed.

Source.—New.

§ 26. When acceptance of private banker's affidavit may be revoked; notice of revocation.

If at any time the superintendent shall have reason to believe that any private banker whose affidavit the superintendent has accepted as provided in the last preceding section is not keeping permanently invested in this state in his banking business the amount of capital specified in such affidavit, or, if such banker is engaged in such business in a city of the first class, that such banker is paying or crediting or advertising to pay or credit any interest, or is paying, crediting or giving any bonus or gratuity whatever or anything of value, on deposits of less than the amount stated in such affidavit, or that any material statement in such affidavit was in fact untrue, the superintendent shall forthwith in-

stitute such investigation as he shall deem necessary to ascertain the truth of such facts and may examine or cause an examination to be made into the books, papers and affairs of such private banker so far as may be necessary for such purposes. If from such investigation or otherwise the superintendent shall be satisfied that such banker is not keeping such capital so invested, or, if such banker is engaged in such business in a city of the first class, that such banker is paying or crediting or advertising to pay or credit any interest, or is paying, crediting or giving any bonus or gratuity whatever or anything of value, on deposits of less than the amount stated in such affidavit, or that any material statement in such affidavit was in fact untrue, the superintendent may, over his official signature, notify such private banker that the acceptance of such affidavit is revoked. Such notice shall be executed in triplicate and the superintendent shall transmit one copy to such private banker, attach another to the duplicate of such affidavit on file in his own office and file the third copy thereof in the county clerk's office in which the other duplicate of such affidavit has been filed.

Source.—New.

§ 27. Licenses to foreign corporations; renewal.

Upon receipt by the superintendent from any foreign corporation of an application in proper form for leave to do business in this state under the provisions of this chapter, he shall, by such investigation as he may deem necessary, satisfy himself whether the applicant may safely be permitted to do business in this state. If from such investigation he shall be satisfied that it is safe and expedient to grant such application and it shall have been shown to his satisfaction that such applicant may be authorized to engage in business in this state pursuant to the provisions of this chapter and has complied with all the requirements of this chapter, he shall issue a license under his hand and official seal authorizing such applicant to carry on such business at the place designated in the license and, if such license is for a limited time, specifying the date upon which it shall expire. Such license shall be executed in triplicate and the superintendent shall

transmit one copy to the applicant, file another in his own office and file the third in the office of the clerk of the county in which is located the place designated in such license. Whenever any such license is issued for one year or less, the superintendent may, at the expiration thereof, renew such license for one year.

Source.—Former §§ 33b, 283, 284, 285.

CROSS-REFERENCES.—As to licensing of foreign banks, see §§ 144-147; of foreign investment companies, see §§ 303-308.

Extent to which foreign trust company may transact business in state, see § 223.

§ 28. Superintendent as attorney to accept service of process.

Whenever pursuant to any provision of this chapter, the superintendent shall have been duly appointed attorney to receive service of process for any foreign corporation, he shall forthwith forward by mail, postage prepaid, a copy of every process served upon him directed to the president or secretary of such corporation, at its last known post office address. For each copy of process the superintendent shall collect the sum of two dollars, which shall be paid by the plaintiff or moving party at the time of such service, to be recovered by him as part of his taxable disbursements if he succeeds in his suit or proceeding. The term process, when used in this section, includes any writ, summons, petition or order whereby any suit, action or proceeding shall be commenced.

Source.—Part former §§ 34, 288.

CROSS-REFERENCES.—Appointment of superintendent as attorney to accept service of process on foreign bank, see § 145; on foreign trust company acting as executor or trustee in this state, see § 223; on foreign investment company, see § 304.

§ 29. Revocation of authorization certificate or license in certain cases.

If at any time the superintendent shall be satisfied that any private banker, personal loan company, personal loan broker or foreign corporation to which he has issued an authorization cer-

tificate or license, is violating any of the provisions of this chapter, or is conducting its business in an unauthorized or unsafe manner, or is in an unsound or unsafe condition to transact its business, or cannot with safety and expediency continue business, the superintendent may, over his official signature and seal of office, notify the holder of such authorization certificate or license that the same is revoked. Such notice shall be executed in triplicate and the superintendent shall forthwith transmit one copy to the holder of such authorization certificate or license, file another in his own office and file the third in the office of the clerk of the county in which such authorization certificate or license has been filed. The superintendent may, in his discretion, publish a copy of such notice, with such other facts as he may deem proper, for six successive days, in the state paper published at Albany.

Source.—Former §§ 33b, 287.

CROSS-REFERENCES.—Effect of revocation of license to foreign bank, see § 146; of authorization certificate to private banker, see § 158; of license to foreign investment company, see § 308; of authorization certificate to personal loan company, see § 351.

§ 30. Assessments for encroachments on reserves against deposits.

If any bank, trust company or private or individual banker to which this chapter is applicable shall not maintain the total reserves required by this chapter, the superintendent shall levy an assessment upon it during such period as any encroachment upon its total reserves amounting to one per centum or more of its aggregate demand deposits shall continue, at the following rates:

1. At the rate of six per centum per annum upon any such encroachment not exceeding two per centum of such deposits.
2. At the rate of eight per centum per annum upon any additional encroachment in excess of two and not exceeding three per centum of such deposits.
3. At the rate of ten per centum per annum upon any additional encroachment in excess of three and not exceeding four per centum of such deposits.

4. At the rate of twelve per centum per annum upon any additional encroachment thereon.

Source.— New.

CROSS-REFERENCES.— As to designation of reserve depositaries, see § 38.

As to orders by superintendent to make good encroachment on reserves, see § 56.

As to reserves required to be carried by banks and individual bankers, see §§ 112, 143; by private bankers, see § 166; by trust companies, see § 197.

As to proceedings to enforce assessments, see § 31.

Assessments entitled to priority of payment, see § 32.

Application of interest on or proceeds of securities in payment of assessments, see § 34.

Assessment as liability of bank, see § 135; of trust company, see § 220.

§ 31. Proceedings in name of superintendent for violations of this chapter.

If any corporation or private or individual banker or personal loan broker to which this chapter is applicable shall refuse or fail, after due notice, to pay any assessment lawfully imposed upon it by the superintendent under section seventeen or section thirty of this article; or if any such corporation, banker or broker or any officer, director, trustee, agent or employee of any such corporation, shall refuse or fail, after due notice, to pay any penalty or forfeiture incurred under any provision of this chapter by such corporation, banker, broker, officer, director, trustee, agent or employee, or if any other person or corporation shall violate any of the prohibitions contained in this chapter; the superintendent may, in his discretion, report the facts to the attorney-general, who shall thereupon, in the name of the superintendent, institute such action or proceeding as the facts may warrant against such person, corporation, banker, broker, officer, director, trustee, agent or employee.

Source.— Part former §§ 7, 76, 333.

CROSS-REFERENCES.— Priority of assessments, penalties and forfeitures, see § 32.

Application of interest on, or proceeds of securities in payment of assessments, penalties and forfeitures, see § 34.

§ 32. Assessments, penalties and forfeitures entitled to priority.

In case of the insolvency or voluntary or involuntary liquidation of any corporation, private or individual banker or personal loan broker to which this chapter is applicable, all unpaid charges lawfully assessed against it by the superintendent and all unpaid penalties and forfeitures incurred by it under any section of this chapter shall be entitled to priority of payment from the assets of such corporation, banker or broker on an equality with any other priority given by this chapter.

Source.—New.

CROSS-REFERENCES.—As to priorities generally, see § 78, and annotations thereto.

§ 33. Securities deposited with superintendent; how held; interest thereon; lien on deposit of foreign corporation.

All stocks and bonds deposited by any corporation or private or individual banker with the superintendent pursuant to any requirement of this chapter shall be registered in the name of office of the superintendent in trust under and pursuant to this chapter. So long as such corporation or banker shall continue solvent and comply with the laws of the state, the superintendent shall pay over to it, or permit it to collect the interest paid on such stocks or bonds. In case of the insolvency or voluntary or involuntary dissolution of any foreign corporation which shall have been licensed by the superintendent to do business in this state, the superintendent shall have a lien on any securities deposited with him by such corporation in favor of its creditors and stockholders residing in this state.

Source.—Former §§ 14, 35, 76. This and the four next succeeding sections contain all the powers and duties of the superintendent with regard to securities deposited with him. The last sentence of this section is a substitute for former § 35.

CROSS-REFERENCES.—Application of interest or proceeds in payment of assessments or penalties, see § 34.

Exchange of securities and withdrawal of excess, see § 35.

Examination and comparison of securities, see § 36.

Return of securities, see § 37.

Deposit of securities with superintendent by bank, see § 105; by individual banker, see § 143; by private banker, see § 161; by trust company, see § 184; by domestic investment company, see § 292; by foreign investment company, see § 306.

PREFERENCE OF DOMESTIC CREDITORS NOT UNCONSTITUTIONAL.

—The giving of a preference to domestic creditors and stockholders in the securities deposited with the superintendent by a foreign corporation is not a violation of the provision of the Federal Constitution guaranteeing to the citizens of each state the privileges and immunities of citizens in other states. See *People v. Granite State Assoc.*, 161 N. Y. 492, aff'g 41 App. Div. 257.

§ 34. When interest or proceeds may be applied in payment of assessments or penalties.

If any such corporation or banker shall not, after due notice, pay to the superintendent any charge assessed against it pursuant to section seventeen or section thirty of this article or any penalty or forfeiture incurred by it under any section of this chapter, the superintendent may apply in payment thereof, with interest at the legal rate, so much as may be necessary of the interest accruing on any stocks or bonds deposited with him by such corporation or banker pursuant to any requirement of this chapter, or in the case of securities deposited pursuant to sections one hundred five and two hundred ninety-two of this chapter may sell so much of such stocks or bonds as may be necessary for that purpose and apply the proceeds in payment of such assessment, penalty or forfeiture with interest at the legal rate.

Source.—Part former §§ 7, 76.

See annotations to § 33.

§ 35. Exchange of securities; withdrawal of excess.

Any corporation or private or individual banker which shall have deposited with the superintendent in trust any stocks or bonds in pursuance of any requirement of this chapter, may be permitted by the superintendent, so long as it shall continue solv-

ent and comply with the laws of the state, from time to time to withdraw any of such stocks or bonds upon depositing with the superintendent other stocks or bonds of the kind it is required by this chapter to keep on deposit with him, the market value of which shall be not less than the market value of those withdrawn, except that, if the market value of the stocks or bonds so held by the superintendent exceeds the amount which such corporation or banker is required by this chapter to keep so deposited, the stocks or bonds in excess of such amount may be withdrawn without depositing others in exchange therefor, or the securities so substituted may be of less market value than those withdrawn, provided there shall at all times be on deposit with the superintendent the amount required by this chapter.

Source.—Part former §§ 14, 15.

CROSS-REFERENCES.—See annotations to § 33.

§ 36. Examination and comparison of securities; receipt to superintendent.

Any corporation or private or individual banker which shall have deposited with the superintendent in trust any stocks or bonds in pursuance of any requirement of this chapter, may once or oftener during each fiscal year, and at such time during ordinary business hours as it may select, examine and compare such securities so deposited by it with the books of the banking department, and, if found correct, execute to the superintendent a receipt stating the different kinds of such securities and the amounts thereof, and that they are in the custody and possession of the superintendent at the date of the receipt. In the case of a corporation such examination may be made by the president, cashier, secretary or treasurer thereof or by an agent duly authorized thereto in writing under the seal of the corporation. In the case of a private or individual banker such examination may be made by such banker personally, or if a partnership or unincorporated association by a member of such partnership or one of the principal officers of such association, or it may be made by an agent of such banker

duly authorized in writing. If made by an agent of such corporation or banker, so authorized, the receipt of such agent shall have the same force and effect as if executed by the corporation or banker.

If any such corporation or banker shall neglect to make any such examination during any fiscal year, the comptroller and superintendent shall appoint some suitable and discreet person as agent for such corporation or banker, who shall make such examination, and if the securities so held by the superintendent shall be found to agree with the books of the department, such agent shall execute the receipt above mentioned and transmit a copy thereof to the corporation or banker in whose behalf it is made, and such receipt shall be of like force and effect as if executed by such corporation or banker. The superintendent shall pay to the person so appointed and making such examination, as a general expense of the department, such compensation for his services and expenses in making such examination as the superintendent shall deem just and reasonable.

Source.—Former § 9.

CROSS-REFERENCES.—See annotations to § 33.

§ 37. Return of securities.

Whenever any banker or corporation which shall have on deposit with the superintendent in trust any stocks or bonds pursuant to any requirement of this chapter, shall have paid in full all assessments imposed on and penalties incurred by it under any of the provisions of this chapter and shall have shown to the satisfaction of the superintendent that it has ceased transacting business and has complied with all the provisions of this chapter, the superintendent shall, upon its being shown to his satisfaction that such corporation or banker is solvent and that the interests of its creditors are fully protected, return such securities to such corporation or banker.

Source.—New.

CROSS-REFERENCES.—See annotations to § 33.

§ 38. Designation of reserve depositaries.

The superintendent shall, in his discretion, upon the nomination of any bank, trust company or private or individual banker, designate a depositary or depositaries for the reserves on deposit of such corporation or banker provided for by this chapter. Except as otherwise provided in this section, such depositary shall be a bank, trust company or national banking association located in this state. But no bank, trust company or national banking association shall hereafter be designated as a depositary of any such reserves unless it shall have a combined capital and surplus of at least

1. One million dollars, if located in a borough of a city which borough has a population of two million two hundred thousand or over;

2. Seven hundred and fifty thousand dollars, if located in a borough of a city which borough has a population of one million or over and less than two million two hundred thousand or in a city which has a population of four hundred thousand or over;

3. Five hundred thousand dollars, if located elsewhere in the state.

No such corporation, if located in a borough having a population of two million two hundred thousand or over, shall be designated as a reserve depositary for any bank, trust company or private or individual banker having a combined capital and surplus greater than its own, unless the combined capital and surplus of such depositary exceeds two million dollars.

Such depositary may also be a banking corporation with a capital and surplus of two million dollars or more, located in the cities of Chicago, Illinois, Boston, Massachusetts, or Philadelphia, Pennsylvania, provided any such banking corporation shall make such reports as the superintendent may prescribe, and submit to such examinations as he may deem necessary.

Source.—Part former §§ 67, 198. The provisions of former § 67 and § 198 permitted reserve deposits to be made in institutions approved generally by the superintendent as reserve depositaries. Under the present law the depositing institution nominates its depositaries to the superintendent, who thereupon designates from such nominees the depositaries for such institu-

tion. The capital and surplus requirements of reserve depositaries have been raised considerably, and unless the capital and surplus of the depositary exceeds two million dollars, the superintendent cannot designate as a reserve depositary an institution with a smaller capital and surplus than the depositing institution. The provision permitting the selection of reserve depositaries in certain cities outside the state is also new.

CROSS-REFERENCES.—Assessments for encroachments on reserves, see § 30.

As to reserves required to be carried by banks and individual bankers, see §§ 112, 143; by private bankers, see § 166; by trust companies, see § 197.

A TRUST COMPANY INCORPORATED BY SPECIAL ACT may be designated by the superintendent as a depositary of lawful money reserve. *Atty.-Gen. Rep.* (1900) 165.

§ 39. Examinations of corporations, bankers, brokers and agencies.

The superintendent shall, either personally or by his deputies or examiners, at least twice in each year visit and examine every bank, trust company and individual banker, and every private banker subject to the provisions of article four of this chapter, except such as shall have duly obtained certain exemptions pursuant to section one hundred sixty of this chapter; and he shall also in like manner visit and examine at least once in each year every other corporation to which this chapter is applicable, and every personal loan broker. He shall have power in like manner to examine every corporation to which this chapter is applicable, at any time prior to its dissolution, and every such private and individual banker and personal loan broker, whenever, in his judgment, such examination is necessary or expedient. He shall have power in like manner to examine every agency located in this state of any foreign banking corporation for the purpose of ascertaining whether it has violated any law of the state and for such other purposes and as to such other matters as the superintendent may prescribe.

On every such examination inquiry shall be made as to the condition and resources of such corporation, banker or broker, the mode of conducting and managing its affairs, the actions of its directors or trustees if a corporation, the investment of its funds, the safety and prudence of its management, the security afforded to those by whom its engagements are held, and whether the requirements of its charter and of law have been complied with in

the administration of its affairs; and as to such other matters as the superintendent may prescribe.

The superintendent may also make such special investigations as he shall deem necessary to determine whether any individual or corporation has violated any of the provisions of this chapter.

The superintendent and every such examiner shall have power to administer an oath to any person whose testimony may be required on the examination or investigation of any such individual, corporation, banker, broker or agency, and to compel the appearance and attendance of any such person for the purpose of any such examination.

Such examination may be made and such inquiry instituted or continued in the discretion of the superintendent after he has taken possession of the property and business of any such corporation, banker or broker under the provisions of section fifty-seven of this article until it shall resume business or its affairs shall be finally liquidated in accordance with the provisions of this article.

If the examination shall be made by the superintendent, or by one or more deputies or examiners who are compensated by salary only, no charge shall be made except for necessary traveling and other actual expenses.

Source.—Part former § 8.

Compelling attendance and testimony of witnesses, see Code Civ. Proc., §§ 854-859.

POWER TO EMPLOY APPRAISERS OF REAL ESTATE.—Where it is necessary to ascertain the value of real estate held by a corporation under examination, the superintendent has power to instruct the examiner to employ expert appraisers and pay them out of the fund appropriated for the payment of examiners. *Atty-Gen. Rep. (1903) 234.*

POWER TO CONDUCT INVESTIGATION AFTER CLOSING BANK.—Prior to the amendment of 1912 authorizing examinations by the superintendent of banks closed by him under former § 19, it was held that the superintendent had no power to conduct a quasi-judicial investigation of a closed bank for the purpose of determining how the bank had been brought to disaster. *Matter of Union Bank, 204 N. Y. 313, reversing 147 App. Div. 593, which affirmed 73 Misc. 404.*

§ 40. Result of examination of savings bank to be certified on records.

The result of every examination of a savings bank made pursuant to the provisions of the last preceding section shall be certi-

fied by the examiners, or one of them, upon the records of the corporation examined.

Source.—Part former § 8.

§ 41. Examiners' and special agents' reports of confidential nature; publication by superintendent.

Every examiner, duly appointed and sworn, shall, when commissioned by the superintendent, forthwith examine fully the books and papers and investigate the business and affairs of any corporation, private or individual banker or personal loan broker designated in his commission, and make written report on oath to the superintendent of the result of such examination. All reports of examiners and special agents shall be confidential communications and shall not be made public unless, in the judgment of the superintendent, the ends of justice or the public advantage will be subserved by the publication thereof, in which event he may publish a copy of any such report or any part thereof in at least one daily newspaper published in the city of New York and in one newspaper published in the county where the principal place of business of such corporation or banker is located, or in such other manner as he may deem proper.

Source.—Former §§ 11, 16. The provision regarding the confidential character of the reports is new.

EXAMINER.—The compensation of an examiner is paid by the bank which is examined upon the certificate of the superintendent of banks. The refusal of the superintendent to act should be reviewed by certiorari and not by mandamus; the examiner's right to demand compensation begins when he has completed his work. *People ex rel. Best v. Preston*, 62 Hun 185; *aff'd* 131 N. Y. 644.

Section 41 alone confers upon the Superintendent of Banks the power to permit the State Board of Tax Commissioners to have access to the reports of banks, trust companies and savings and loan associations for the purpose of using them in connection with the work of fixing the ratio between the assessed valuation and the real value of taxable property. *Attorney-General Rep.*, May 19, 1915.

§ 42. Reports from corporations, bankers and brokers.

It shall be the duty of the superintendent to require all corporations to which this chapter is applicable, all individual bankers and personal loan brokers and all private bankers to whom article four of this chapter is applicable to make to him the regular periodical reports of their condition prescribed by this chapter and he shall prescribe the form and contents of all such reports. In addition to such regular reports he may require any such corporation, banker or broker to make special reports to him at such times

and in such form as he may prescribe, and may direct that such special reports be verified and prescribe the form of the verification.

He shall at least once in every three months, designate some day therein in respect to which every such bank, trust company and individual banker, and every such private banker except such as shall have duly obtained certain exemptions pursuant to section one hundred sixty of this chapter, shall report to him, and he shall serve a notice designating such day. Such notice may be served by delivering the same to such private or individual banker or, in the case of a corporation, by delivering the same at its place of business to some officer therein, or it may be served in any case by depositing it in the post-office enclosed in a post-paid wrapper directed to such corporation or banker at its principal place of business.

Source.—Former § 21. The provision authorizing the superintendent to require special reports is new.

CROSS-REFERENCES.—Reports by banks and individual bankers, see §§ 133, 143; by private bankers, see § 170; by trust companies, see § 218; by savings banks, see § 273; by investment companies, see § 298; by safe deposit companies, see § 329; by personal loan companies and personal loan brokers, see § 365; by savings and loan associations, see § 413; of credit unions, see § 477.

CANNOT REQUIRE REPORT FROM BANK IN LIQUIDATION.—The superintendent's power to require reports extends only to "going" concerns. He cannot require a report from a bank in process of voluntary liquidation. *Atty.-Gen. Rep. (1906) 499.*

FALSE REPORT—SUPERINTENDENT'S POWERS.—If a false report is made to the banking department it must be investigated through the judicial branch of the government which has jurisdiction over such matters. The superintendent is not invested with judicial powers and cannot decide whether a person is or is not guilty of a crime. *Matter of Union Bank, 204 N. Y. 313, 322.*

§ 43. Summary of reports of banks, trust companies and private and individual bankers to be published.

Within thirty days after the receipt of any quarterly report of any bank, trust company or private or individual banker, the superintendent shall publish a summary thereof in a newspaper at Albany in which notices by state officers are required by law to be published, arranging the reports of individual bankers and private bankers in separate classes, and specifying the names and

places of business of each, and if partnerships or unincorporated associations, the names and residences of the members thereof.

Source.—Former § 24.

§ 44. Superintendent's powers as trustee for creditors and depositors.

The superintendent shall have power to act in his name of office as trustee for the creditors and depositors of any corporation, private or individual banker or personal loan broker to which this chapter is applicable. As such trustee he may take and hold stocks, bonds or other securities deposited with him for the benefit and protection of such creditors and depositors, may enter into agreements with any such corporation, banker or broker, or with the officers, directors or trustees of such corporation, for the benefit of its creditors and depositors, and may in his name of office maintain any action or proceeding necessary to enforce such agreements.

Source.—New.

§ 45. Unclaimed deposits, dividends and interest; deposit by superintendent in trust; preference.

The superintendent may take and hold as trustee for the owners thereof any sums which remain due to and unclaimed by any creditor, depositor, stockholder or shareholder of any corporation or private or individual banker, to which this chapter is applicable, after the completion of the voluntary or involuntary liquidation of the business and affairs of such corporation or banker. Whenever such sums are received by the superintendent and he is not in possession of the business and affairs of such corporation or banker, he shall give his receipt for such moneys and shall forthwith deposit them in one or more solvent state banks, trust companies or savings banks, to the credit of the superintendent of banks in trust for the persons entitled thereto. At the completion of a liquidation by the superintendent, he shall in like manner deposit such moneys at the expiration of six months after the order for final distribution.

All such deposits by the superintendent shall be entitled to priority of payment in case of the insolvency or voluntary or in-

voluntary liquidation of the depositary on an equality with any other priority given by this chapter.

Source.—New, except the sentence relating to liquidations by the superintendent which is taken from former § 19. This and the two succeeding sections gather together all the powers and duties of the superintendent with regard to unclaimed deposits, dividends and interest.

CROSS-REFERENCES.—Publication by superintendent of unclaimed sums, see § 46.

Index to be kept by superintendent, and payment to persons entitled, see § 47.

Disposition of unclaimed dividends on liquidation by superintendent, see § 78.

Annual report by superintendent as to unclaimed sums, see § 83.

Annual report of unclaimed sums by banks and individual bankers, see §§ 134, 143; by private bankers, see § 157; by trust companies, see § 219; by savings banks, see § 274.

§ 46. Superintendent must publish list of unclaimed deposits, dividends and interest every five years.

On the second Wednesday in January, nineteen hundred and sixteen, and on the second Wednesday in January in each fifth year thereafter the superintendent shall cause to be published in a paper in Albany in which notices by state officers are required by law to be published, and in at least one daily newspaper published in each city of the first or second class within the state, a list containing the names of the banks, trust companies, private and individual bankers and savings banks which, according to their last reports to him, held unclaimed deposits, dividends or interest, and the names of the liquidated corporations and private and individual bankers for the benefit of whose unlocated depositors, creditors, stockholders or shareholders, the superintendent holds deposits, dividends or interest as trustee, together with the full names of the persons entitled to receive such unclaimed deposits, dividends or interest from each of said corporations and bankers or from the superintendent.

Source.—New.

CROSS-REFERENCES.—See annotations to § 45.

Section 46 of the Banking Law must be read in connection with § 35 of the State Finance Law. Attorney-General Rep., Jan. 5, 1916.

§ 47. Index of persons entitled to unclaimed sums; payment to persons entitled.

The superintendent shall keep in his office an index of the names of all persons for whom he holds in trust any unclaimed deposits, dividends or interest and of the names of all persons reported to him by any corporation or private or individual banker as entitled to any such unclaimed deposits, dividends or interest held by such corporation or banker. Whenever any person shall show by evidence satisfactory to the superintendent that he is lawfully entitled to receive any such money, the superintendent shall indicate to him the corporation or banker by which it is held, or, if the superintendent holds such money in trust, he may pay it over to such person. In cases of doubt or conflicting claims, he may require of the claimant an order of the supreme court authorizing and directing the payment thereof, but for any payment made by him in good faith, by check or order payable to the creditor, depositor, stockholder or shareholder appearing from the records in his office to be entitled thereto, he shall be held harmless and shall not be liable to any subsequent claimant.

Source.—The first sentence is taken from former § 30. The provision as to payment over to the persons entitled, so far as it relates to unclaimed dividends on liquidations by the superintendent, is taken from former § 19. The provision protecting the superintendent against subsequent claimants is new.

See annotations to § 45.

§ 48. Approval of superintendent; filing.

In any case in which this chapter makes the approval of the superintendent a condition precedent to the doing of any act, it shall lie within his sound discretion to grant or refuse his approval. Such approval, if granted, shall be in writing and a copy thereof shall be filed in the office of the superintendent.

Source.—New.

APPROVAL NUNC PRO TUNC.—It seems that the superintendent's approval may be given *nunc pro tunc* where an act has been done in good faith and in ignorance of the statutory requirement. Atty.-Gen. Rep. (1896) 193.

APPROVAL OF CHANGE OF CORPORATE NAME.—Under Gen. Corp. Law, § 60, an application by a corporation organized under the Banking Law for leave to change its name must be first approved by the superintendent. Atty.-Gen. Rep. (1900) 255; Atty.-Gen. Rep. (1902) 186.

REDUCTION OF CAPITAL.—A reduction of the capital of a corporation organized under the Banking Law may not be effected without the written consent of the superintendent. Atty.-Gen. Rep. (1909) 738.

§ 49. Extensions of time by superintendent.

For satisfactory cause to him shown, the superintendent may grant extensions of time to corporations or private or individual bankers or personal loan brokers to which this chapter is applicable, as follows:

1. He may extend for not more than one year the time within which any such corporation may commence business. Such extension shall only be made by an order under his hand and official seal which shall be executed in triplicate and one copy thereof shall be filed in the superintendent's office, one in the office of the clerk of the county in which the organization certificate of such corporation has been filed, and the third shall be transmitted to such corporation.

2. He may extend for not exceeding ten days in the case of a bank, trust company, private banker or individual banker, and for not exceeding twenty days in the case of any other corporation to which this chapter is applicable or of a personal loan broker, the time within which any such corporation, banker or broker is required to make and file any report to the superintendent.

3. He may extend for such period as he may deem proper the time within which any corporation or private or individual banker is required by this chapter to dispose of real estate held by it.

Source.—Subdivision 1 is adapted from former § 136, relating to savings banks. Subdivision 2 was suggested by former § 21. Subdivision 3 is new.

CROSS-REFERENCES.—Forfeiture of corporate rights by failure to begin business, see § 485.

Time within which reports must be made by banks and individual bankers, see §§ 133, 134, 143; by foreign banks, see § 147; by private bankers, see §§ 157, 170; by trust companies, see §§ 218, 219; by savings banks, see §§ 273, 274; by investment companies, see § 298; by safe deposit companies, see § 329; by personal loan companies and brokers, see § 365; by savings and loan associations, see § 413; by credit unions, see § 477.

Time within which real estate must be disposed of by banks, see § 107; by private bankers, see § 163; by trust companies, see § 189; by savings banks, see § 240.

ADMINISTRATIVE DISCRETION OF SUPERINTENDENT.—Under former § 211 (now § 410) requiring a copy of amendments to the by-laws of a savings and loan association to be filed in the office of the superintendent within thirty days after the adoption thereof, the Attorney-General was of the opinion that it was within the administrative discretion of the superintendent to receive such amendments for filing after the statutory period had elapsed. Atty-Gen. Rep. (1912) 183.

§ 50. Change of location; approval or refusal; certificate.

Upon receipt by the superintendent of a written application from any corporation or private or individual banker or personal loan broker to which this chapter is applicable for leave to change its place of business to another place in the same county and within the limits of the village, borough or city, if in a city not divided into boroughs, in which its principal place of business is then located, the superintendent shall, if he shall be satisfied that there is no reasonable objection to such change of location, give his written approval of the proposed change. If the proposed place of business is without such limits, the superintendent shall designate for the publication of the notice of intention to make such application a newspaper published in the county in which such place of business is located. Upon receipt by the superintendent of evidence satisfactory to him of due publication of such notice, he shall, if satisfied that there is no reasonable objection to such change of location, make a certificate in triplicate under his hand and official seal authorizing such change and specifying the date on or after which, and the place to which such change may be made, and shall file one thereof in his own office, one in the office of the clerk of such county, and shall transmit the other to such applicant. If the superintendent shall be satisfied in any case that such change is undesirable or inexpedient, he shall refuse such application and notify such corporation or banker of his determination.

Source.—Former §§ 31, 147.

CROSS-REFERENCES.—Change of location by banks, see § 119; by private bankers, see § 159; by trust companies, see § 205; by savings banks, see § 259; by investment companies, see § 296; by safe deposit companies, see § 321; by personal loan companies, see § 352; by savings and loan associations, see § 403; by credit unions, see § 460. As to branches, see § 51 and annotations.

§ 51. Branch offices; approval or refusal; certificate.

Upon receipt by the superintendent of a written application for leave to open a branch office from a corporation authorized by this chapter to open branch offices, he shall make such investigation as he may deem necessary to ascertain whether the public convenience and advantage will be promoted by the opening of such branch office and whether such corporation has the amount of actually paid in capital required by this chapter. If satisfied that the granting of such application is expedient and desirable, he shall make a certificate in triplicate under his hand and official seal authorizing the opening and occupation of such branch office and specifying the date on or after which and the conditions under which it may be opened and the place where it shall be located, and shall file one triplicate in his own office, one in the office of the clerk of the county wherein the principal place of business of such corporation is located, and shall transmit the other to such applicant. If the superintendent shall be satisfied that the opening of such branch office is undesirable or inexpedient or that such corporation has not the requisite amount of capital actually paid in, he shall refuse such application and notify such corporation of his determination.

Source.—Former §§ 109, 186, subd. 11.

CROSS-REFERENCES.—Branch offices of banks, see § 110; of trust companies, see § 195; of savings banks, see § 245; of investment companies, see § 293, subd. 5; of safe deposit companies, see § 318; of personal loan companies, see § 349.

§ 52. Superintendent must furnish savings banks list of legal investments.

On or before the first day of January, nineteen hundred and fifteen, and on or before the first day of January in each and every year thereafter, the superintendent of banks shall mail to each savings bank in the state a list containing the names of states and municipalities, the bonds of which, in his judgment, if legally issued and properly executed, conform to the requirements of section two hundred and thirty-nine of this chapter, and also as complete a list as is practicable of railroad bonds which, in his judgment, if legally issued and properly executed, conform to the provisions of said section.

In the preparation of such list he may employ such expert assistants as he deems proper and apportion the expense thereof among the savings banks of the state, or he may rely upon information contained in publications which he may deem authoritative in reference to such matters. He shall be in no way liable for the omission from such list of the name of any state or municipality the bonds of which conform to the provisions of said section, or of any railroad bond which conforms to the provisions of said section, nor for the inclusion in such list of the name of any state or municipality the bonds of which do not conform to the provisions of said section, or of any railroad bond which does not conform to the provisions of said section.

Source.— New.

CROSS-REFERENCES.— Investments of savings banks, see § 239.

§ 53. Superintendent must furnish savings banks estimated market value of bonds.

On or before the first day of June and the first day of December in each year the superintendent shall furnish to each savings bank a list giving with such detail as he may deem necessary the estimated market values, either specifically or by classes, at which the bonds held by it, which are legal investments for savings banks, shall be reported at the date of its next semi-annual report. In making such valuations the superintendent shall be governed so far as is practicable by actual sales of such bonds as ascertained by him, or as reported by the various stock exchanges and financial papers during the preceding five months, and by general business conditions.

Source.— New.

Semi-annual reports of savings banks, see § 273.

§ 54. Must determine valuation of securities in arrears of interest.

The superintendent, upon application by any savings bank or savings and loan association, shall determine and report to it the valuation of such stocks or bonds, or bonds and mortgages as are in arrears of interest for six months or more, and of all other investments not enumerated in section two hundred fifty-seven of this chapter, from the best information he can obtain; and he may

change the valuation thereof from time to time as he may obtain other and further information.

Source.—Former § 154.

CROSS-REFERENCES.—How per centum of par value surplus determined, see § 257.

§ 55. When superintendent may require savings bank to sell securities.

Wherever any securities purchased by any savings bank pursuant to the provisions of section two hundred thirty-nine of this chapter shall have, either before or since the time such purchase was made, ceased to be an authorized investment for the moneys of savings banks, the superintendent may, in his discretion, require such savings bank to sell such securities.

Source.—Former § 146, subd. 5, broadened.

POWER UNDER FORMER LAW.—The Attorney-General was of the opinion that the superintendent had power, under former §§ 8 and 17, to require a savings bank to dispose of an investment which, though legal when made, had become illegal by reason of the changed condition and character of the security. But the power should be so exercised as to prevent loss and embarrassment in the business of the bank. Atty.-Gen. Rep. (1908) 371.

§ 56. Orders of superintendent.

1. To discontinue unlawful or unsafe practices. Whenever it shall appear to the superintendent that any corporation to which this chapter is applicable, or any individual banker, or any private banker to which article four of this chapter is applicable, or any personal loan broker or any foreign corporation licensed by the superintendent to do business under this chapter, has violated its charter or any law, or is conducting its business in an unauthorized or unsafe manner, he may issue an order directing the discontinuance of such unauthorized or unsafe practices and requiring the delinquent to appear before him, at a time and place fixed in said order, to present any explanation in defense of the practices directed in said order to be discontinued.

2. To make good impairment of capital. Whenever it shall appear to the superintendent that the capital stock of any such corporation has been reduced in value below the requirements of law or of its certificate of incorporation or of its articles of association,

or that the capital of any such private or individual banker or personal loan broker has been reduced in amount below the requirements of law, he may issue an order directing that such corporation, banker or broker make good such deficiency forthwith or within a time specified in such order.

3. To make good encroachments on reserves. Whenever it shall appear to the superintendent that either the total reserves or reserves on hand of any such corporation or private or individual banker required by this chapter to maintain such reserves are below the amount required by law to be maintained, or that such corporation or banker is not keeping its reserves on hand as required by this chapter, he may issue an order directing that such corporation or banker make good such reserves forthwith or within a time specified in such order, or that it keep its reserves on hand as required by this chapter.

4. To keep books and accounts as prescribed. Whenever it shall appear to the superintendent that any corporation to which this chapter is applicable or any individual banker or personal loan broker or any private banker subject to the provisions of article four of this chapter except such as shall have duly obtained certain exemptions pursuant to section one hundred sixty of this chapter, does not keep its books and accounts in such manner as to enable him readily to ascertain its true condition, he may issue an order requiring such corporation, banker or broker, or the officers thereof or any of them, to open and keep such books or accounts as he may, in his discretion, determine and prescribe for the purpose of keeping accurate and convenient records of the transactions and accounts of such corporation, banker or broker.

5. To reduce charges of personal loan company or broker. Whenever it shall appear to the superintendent that the net earnings of any personal loan company during its preceding fiscal year, as determined by section three hundred and fifty of this chapter, or the profits of any personal loan broker during the preceding calendar year, as determined by section three hundred and sixty-four of this chapter, shall have exceeded twelve per centum of the capital stock or permanent capital of such company or broker, he may issue an order requiring such company or broker to reduce interest rates and charges, so that its annual net earnings or profits, as so

determined, shall not exceed twelve per centum of its capital stock or permanent capital.

Source.—Subdivisions 1 and 2 are adapted from former § 17; subdivision 3 from former §§ 67, 198; subdivision 4 from former § 8; subdivision 5 from former § 313. Former section 17 empowered the superintendent to require an impairment of capital to be made good within sixty days; the revision makes provision for ordering such deficiency to be made good “forthwith” or within a stated time. Former §§ 67 and 198 allowed thirty days within which to make the reserve good.

CROSS-REFERENCES.—Disobedience of order as ground for taking possession, see § 57.

Assessment of stockholders to make good impairment of capital of bank, see § 121; of trust company, see § 207; of safe deposit company, see § 323.

Assessments by superintendent for encroachments on reserves, see § 30.

Reserves required to be carried by banks and individual bankers, see §§ 112, 143; by private bankers, see § 166; by trust companies, see § 197.

Requirements as to methods of keeping books of banks, see § 109; of private bankers, see § 165; of trust companies, see § 194; of savings banks, see § 246; of investment companies, see § 295; of safe deposit companies, see § 320; of personal loan companies and brokers, see § 367; of savings and loan associations, see § 391.

Limitation upon profits of personal loan company, see § 350; of personal loan broker, see § 364.

§ 57. When superintendent may take possession of delinquent corporation, banker or personal loan broker.

The superintendent may forthwith take possession of the business and property of any corporation to which this chapter is applicable, or any individual banker or personal loan broker, or any private banker to which article four of this chapter is applicable whenever it shall appear that such corporation or banker:

1. Has violated its charter or any law;
2. Is conducting its business in an unauthorized or unsafe manner;
3. Is in an unsound or unsafe condition to transact its business;
4. Cannot with safety and expediency continue business;
5. Has an impairment of its capital;
6. Has suspended payment of its obligations;
7. Has neglected or refused to comply with the terms of a duly issued order of the superintendent;

8. Has refused, upon proper demand, to submit its records and affairs for inspection to an examiner of the banking department;

9. Has refused to be examined upon oath regarding its affairs.

The superintendent may also forthwith take possession of the business and property of any savings and loan association which for two years after due demand or notice of withdrawal has been filed with it by any shareholder, has failed to pay matured shares or withdrawals or any part thereof as provided in section three hundred ninety-eight of this chapter.

Source.—Former § 19. Last paragraph taken from former § 229. Sections 57–81 are substituted for the matter contained in former § 19.

CROSS-REFERENCES.—As to voluntary dissolution, see § 486. As to proceedings to dissolve corporations generally and for voluntary dissolution, see Gen. Corp. Law, §§ 100–221.

REASONS FOR ENACTMENT OF FORMER § 19.—The reason for the enactment of former § 19 giving the superintendent the right to take charge of a bank in unsound condition, was because during the financial depression of 1907 there were a series of receiverships in which the demand for commissions and counsel fees were so extravagant as to arouse an instant popular demand for reform. *Matter of Union Bank*, 204 N. Y. 313, 316.

A SPECIALLY CHARTERED TRUST COMPANY is subject to this section by reason of § 187 (former § 197). *Atty.-Gen. Rep.* (1910) 832.

SUPERINTENDENT ACTS BY VIRTUE OF STATUTE.—In taking possession of a bank under this section the superintendent acts as such by virtue of statutory authority and not as a result of any proceeding in court, though his administration is, in certain respects, subject to the action of the State Supreme Court. *In re Bologh*, 185 Fed. 825.

EFFECT OF ASSIGNMENT FOR CREDITORS.—The powers of the superintendent over a corporation organized under the Banking Law are not limited or interfered with by an assignment for the benefit of creditors. *Atty.-Gen. Rep.* (1901) 265.

NECESSITY FOR EXAMINATION.—“The plain theory of the statute is that the superintendent shall not take possession of a bank for purposes of liquidation until after he has made an examination from which it appears that the conditions warrant the exercise of the power.” *Matter of Union Bank*, 204 N. Y. 313, 317.

EFFECT OF TAKING POSSESSION.—The legal existence of an incorporated bank does not cease when the superintendent takes it over. *Matter of Union Bank*, 147 App. Div. 593.

The superintendent on taking possession merely becomes a custodian and liquidator. The corporation is not extinguished and still retains title to its assets. *Lafayette Trust Co. v. Higginbotham*, 136 App. Div. 747.

Section 229 of the former Banking Law of 1909, as amended, empowering the Superintendent of Banks to take possession of the co-operative building bank where demands for withdrawals remain unpaid for two years, does not amount to a command to such institution to pay within two years, but relates solely to the supervisory powers of the State Superintendent. *Molyneaux v. Co-operative Building Bank*, 169 App. Div. 731.

Rights of creditors are fixed as of the time the superintendent takes possession of the bank. *People v. Bank of Staten Island*, 70 Misc. 634.

After the superintendent has taken possession, the directors have no power to begin proceedings for voluntary dissolution. *Matter of Murray Hill Bank*, 153 N. Y. 199.

§ 58. Circumstances under which possession of superintendent may terminate.

When the superintendent shall have duly taken possession of such corporation, private or individual banker or personal loan broker, he may hold such possession until its affairs are finally liquidated by him, unless:

1. He shall have permitted such corporation or banker to resume business pursuant to the provisions of section sixty-one of this article;

2. The superintendent shall have been directed by order of the supreme court to surrender such possession, pursuant to the provisions of section sixty of this article;

3. The stockholders of such corporation, at a meeting called by the superintendent pursuant to the provisions of section seventy-nine of this article, shall have duly determined to appoint, and shall have appointed, an agent or agents to continue the liquidation of such corporation, and such agent or agents shall have qualified to take possession of its remaining assets as provided in section seventy-nine of this article;

4. The depositors and other creditors of such banker or broker and the expenses of such liquidation shall have been paid in full.

Source.—Former § 19. The language of the section is all new, but all the material is collected from former § 19.

§ 59. Superintendent may report delinquencies to attorney-general to procure judgment of dissolution; reports presumptive evidence.

Whenever the superintendent is entitled to take possession of any such corporation for any reason set forth in section fifty-seven of this article, he may report to the attorney-general and specify in such report the delinquencies of such corporation; and the attorney-general may institute an action to procure a judg-

ment dissolving such corporation. Every such report and every report of a duly instituted examination of such corporation, when duly verified, shall be presumptive evidence of the facts therein stated in any action or proceeding against such corporation instituted by the attorney-general.

Source.—Former §§ 18 and 26.

As to actions by Attorney-General to dissolve corporations, see Gen. Corp. Law, § 101, et seq.

NO RELATOR NECESSARY.—Upon receiving the report of the superintendent, the Attorney-General may bring an action in the name of the people of the state to dissolve the corporation, without waiting for a relator to set him in motion. *People v. Mercantile Co-op. Bank*, 53 App. Div. 295.

SUFFICIENCY OF COMPLAINT.—In *People v. Manhattan Real Estate, etc., Co.*, 175 N. Y. 133, it was held that in an action brought by the Attorney-General to dissolve a corporation organized under the Banking Law, the complaint was demurrable unless it contained a traversable allegation that the corporation was insolvent or unable to pay its debts, or that it had violated some specified law. But under the section as it now stands it would seem sufficient to allege the existence of any of the grounds enumerated in § 57.

For complaint held sufficient in action by Attorney-General to procure dissolution of corporation, see *People v. Republic Sav. & L. Assoc.*, 53 App. Div. 384.

AN ACTION TO DISSOLVE A SAVINGS AND LOAN ASSOCIATION could be maintained by the Attorney-General under former § 18. *People v. Republic Savings & Loan Assoc.*, 53 App. Div. 384.

REPORT PRESUMPTIVE EVIDENCE.—An examiner's report showing that a corporation was insolvent on a certain date, is prima facie evidence thereof. *People v. Empire Loan & Ins. Co.*, 15 App. Div. 69.

§ 60. Manner and time within which action of superintendent in taking possession may be tested.

At any time within ten days after the superintendent has taken possession of the property and business of any such corporation, banker or broker, such corporation, banker or broker may apply to the supreme court, in the judicial district in which the principal office of such corporation, banker or broker is located, for an order requiring the superintendent to show cause why he should not be enjoined from continuing such possession. The court may, upon good cause shown, direct the superintendent to refrain from further proceedings and to surrender such possession.

Source.—Former § 19.

§ 61. Superintendent may permit resumption of business.

The superintendent may, upon such conditions as may be approved by him, surrender possession for the purpose of permitting such corporation, banker or broker to resume business; but the superintendent shall not authorize any reduction of capital stock or capital as one of the terms of such resumption.

Source.—Former § 19. The prohibition against reduction of capital is new and is intended to prevent any diminution of the stockholders' liability.

SCALING DOWN DEPOSITS OF SAVINGS BANK.—In *People v. Ulster County Sav. Bank*, 64 Hun 434, aff'd 133 N. Y. 689, it was held that, under Laws of 1882, c. 400, § 273 (repealed by the former Banking Law), the court had power to permit an insolvent savings bank to resume business upon scaling down its deposits sufficiently to render the bank solvent; and it seems that such power resides in the court independently of statute.

By § 280 of the present law express provision is made for reduction of liability to depositors of an insolvent savings bank. However, the constitutionality of this provision has been questioned. See dissenting opinion of Putnam, J., in *In re Eagle Sav. & L. Assoc.*, 164 App. Div. 867.

§ 62. Special deputies; assistants; counsel and other employees.

The superintendent may, by certificate, under his hand and official seal, appoint one or more special deputy superintendents as agent or agents to assist him in liquidating the business and affairs of any corporation or private or individual banker or personal loan broker in his possession. The superintendent shall file such certificate in his office and shall cause a certified copy thereof to be filed in the office of the clerk of the county in which the principal office of such corporation, banker or broker is located. He may, from time to time, delegate such special deputy superintendents to perform such duties connected with such liquidation as he may deem proper. He may employ such expert assistants and counsel and may retain such of the officers or employees of such corporation, banker or broker as he may deem necessary in the liquidation and distribution of the assets of such corporation, banker or broker. He shall require such security as he may deem proper from his agents and assistants appointed pursuant to the provisions of this section.

Source.—Former § 19, in part, without material change.

CROSS-REFERENCES.—Eligibility of examiner to appointment as special deputy, see § 15.

Compensation of special deputies, assistants, counsel and other employees, see § 63.

§ 63. Payment by superintendent of expenses of liquidation.

The superintendent shall pay out of the funds in his hands, of such corporation or private or individual banker or personal loan broker, all expenses of liquidation, subject to the approval of the supreme court in the judicial district in which the principal office of such corporation, banker or broker is located, and upon notice of the application for such approval to such corporation, banker or broker. He shall, in like manner, fix and pay the compensation of special deputy superintendents, assistants, counsel and other employees appointed to assist him in such liquidation pursuant to the provisions of this article. But a special deputy who, as examiner acting under commission from the superintendent, has previously examined the books, papers and affairs of such corporation, banker or broker, shall not receive compensation as such special deputy which exceeds by more than five dollars a day the per diem compensation received by him as examiner at the time of making such examination.

Source.—Former § 19. The last sentence is new.

CROSS-REFERENCES.—Eligibility of examiner to appoint as special deputy, see § 15.

Appointment of special deputies and employment of counsel and assistants, see § 62.

COMPENSATION OF COUNSEL.—In view of the fact that the compensation of counsel was by law payable out of the funds of the insolvent institution, the court granted an additional allowance of \$1,000 in a difficult and extraordinary case in which the insolvent was successful, although such allowance would not otherwise have been made. *First Nat. Bank v. Lafayette Trust Co.*, 86 Misc. 558.

§ 64. Procedure of superintendent to obtain possession of pleadings, et cetera, in actions against which attorneys' liens are asserted.

When the superintendent is in possession of the business and property of any such corporation or private or individual banker or personal loan broker, and attorneys' liens are asserted by attorneys of such corporation, banker or broker against any causes of action to which such corporation, banker or broker is a party, or against pleadings or other papers in the possession of such attorneys relating to such causes of action, or if such liens are asserted against any evidences of title to any assets or against any of the assets of such corporation, banker or broker then in the possession of such attorneys, the superintendent may institute special pro-

ceedings and petition the court to fix and determine the amount of said liens. Such proceedings shall be instituted in the county in which the principal office of such corporation, banker or broker is located. Upon application of the superintendent and upon notice to such attorneys to be prescribed by the court, the court may by order prior to final order in such proceeding direct such attorneys to deliver to the superintendent all property of such corporation, banker or broker, against which such liens are asserted, together with such consents to substitution of attorneys as the court may direct, upon the superintendent furnishing security to such attorneys in the manner and to an amount to be fixed by the court.

Source.—New. The purpose of the section is to prevent delays in liquidation by controversies over counsel fees.

Enforcement of attorney's lien, see Judiciary Law, § 475.

The procedure to enforce an attorney's lien. *Matter of King*, 168 N. Y. 53.

§ 65. On taking possession, superintendent shall notify those holding assets; effect of notification.

When the superintendent shall have taken possession of the property and business of any such corporation or private or individual banker, or personal loan broker, he shall forthwith give notice of such fact to any and all banks, trust companies, associations and individuals holding any assets of such corporation, banker or broker. No corporation, association or individual having notice or knowledge that the superintendent has taken possession of such corporation, banker or broker, shall have a lien or *broker, for any payment, advance or clearance thereafter made, charge against any of the assets of such corporation, banker or or liability thereafter incurred.

Source.—Former § 19, in part, without material change.

§ 66. Inventory of assets and where filed.

After the superintendent shall have taken possession of the property and business of such corporation or private or individual

* The present banking law passed the legislature under an emergency message. Senate print 1530 was amended and passed in both houses on the 27th day of March, 1914. In the reprint of the bill as amended, after its passage, two lines were transposed by the printer. The last clause in this section as passed by both houses read as follows: "Shall have a lien or charge against any of the assets of such corporation, banker or broker, for any payment, advance or clearance thereafter made, or liability thereafter, incurred."

banker, or personal loan broker, he shall make in duplicate an inventory of the assets of such corporation, banker or broker. He shall file one copy of such inventory in his office and shall cause one copy to be filed in the office of the clerk of the county in which the principal office of such corporation, banker or broker is located.

Source.— Former § 19, in part, without material change.

§ 67. Disposition by superintendent of property held by delinquent as bailee, or depositary for hire.

The superintendent may, after he has taken possession of any such corporation or private or individual banker or personal loan broker, cause to be mailed to all persons claiming to be, or appearing upon the books of such corporation, banker or broker to be, the owner or owners of any personal property theretofore left in the possession of such corporation, banker or broker as bailee or depositary for hire, or the lessee of any safe, vault or box, a notice in writing in a securely closed, post-paid, registered letter directed to each of such persons at his post-office address as recorded upon its books, or, if his name is not recorded in said books, at his last known post-office address, notifying such person to remove all such personal property within a period stated in said notice, and not less than sixty days from the date thereof. If such property shall not have been removed within the time fixed by such notice, the superintendent may apply to the supreme court in the judicial district in which such property is located for an order directing him as to the disposition of such property; and he may cause any safe, vault or box held by, or on the premises of, such corporation, banker or broker to be thereafter opened in his presence or in the presence of one of the special deputy superintendents, and of a notary public, not an officer or in the employ of the corporation, banker or broker or of the superintendent, and the contents, if any, to be sealed and distinctly marked by such notary public, with the name and address of the person in whose name such safe, vault or box stands upon the books of the corporation, banker or broker, and a list and description of the property therein to be attached thereto. Such package so sealed and addressed together with the list and description of the property therein, may be kept by the superintendent in one of the general safes or boxes of the corpora-

tion, banker or broker until delivered to the person whose name appears thereon or until otherwise disposed of as directed by the court.

Source.—Former § 19, in part.

A SPECIAL DEPOSIT OF MONEY with a trust company to the credit of a pending action and subject to the order of the court creates a bailment. Such money does not become the property of the trust company and does not pass to the Superintendent upon his taking possession. *Van Wagoner v. Buckley*, 148 App. Div. 808.

DEPOSITS RECEIVED WHILE INSOLVENT.—One depositing drafts with a bank which is then insolvent to the knowledge of its officers is entitled to reclaim them from the receiver. The fraud of the bank in holding itself out as solvent entitles the depositor to rescind the contract implied from such deposit. *Cragie v. Hadley*, 99 N. Y. 121.

SUPERINTENDENT'S RIGHT TO RELEASE OR RECEIPT.—The Superintendent cannot exact, as a condition of delivering property held by the delinquent as bailee, the execution by the owner of a release of liability on the part of the delinquent, or of himself, or of his deputy, for wrongful detention. But he may exact an ordinary receipt so that he may have an official record of the acknowledgment of the delivery of the property to the owner. *Matter of Carnegie Trust Co.*, 162 App. Div. 76.

APPLICATION BY CLAIMANT TO COMPEL SURRENDER OF PROPERTY.—The section does not expressly authorize the court, on the application of the claimant, to summarily direct the surrender of property by the Superintendent, and it is doubtful whether such an order could be made without the Superintendent's consent. But where, upon such an application, the Superintendent consents to the jurisdiction, an order may be made directing the surrender of the property. *Matter of Carnegie Trust Co.*, 162 App. Div. 76.

§ 68. Effect of superintendent's notice to remove upon contract of bailment or of deposit for hire.

After the superintendent shall have duly mailed a notice in writing, as provided in section sixty-seven of this article, the contract of bailment or of deposit for hire, or lease of safe, vault or box, if any, between the person duly notified and the corporation or private or individual banker or personal loan broker shall cease and determine upon the date for removal fixed in such notice, and the amount of the unearned rent or charges, if any, paid by such person shall become a debt of the corporation, banker or broker to said person.

Source.—Former § 19 in part.

§ 69. Liquidation and conservation of assets; compounding debts and compromising certain claims.

The superintendent is authorized, upon taking possession of the property and business of such corporation or private or individual banker or personal loan broker, to liquidate the affairs thereof and

to do all acts and to make such expenditures as in his judgment are necessary to conserve its assets and business. He shall proceed to collect the debts due. He may upon an order of the supreme court, sell or compound all bad or doubtful debts held by, and compromise claims against such corporation, banker or broker, other than deposit claims, and, upon such terms as the court shall direct, may sell or otherwise dispose of all or any of the real and personal property of such corporation, banker or broker. In case any of the real property so sold is located in a county other than the county in which the application to the court for leave to sell the same is made, the superintendent shall cause a certified copy of said order to be filed in the office of the clerk of the county in which such real property is located.

Source.—Part former § 19. Power to compromise claims added.

Power to sue, defend, execute instruments, etc., see § 71.

POWER TO EXPEND BANK'S FUNDS.—When the Superintendent deems it necessary and proper to expend some of the funds of the bank in order to conserve its assets, he may do so without an application to the Supreme Court, and is not liable for any loss occasioned thereby, unless he has failed to exercise honestly his best judgment and discretion. Atty.-Gen. Rep. (1912), vol. 2, p. 55.

SALE OF REAL PROPERTY.—Where, on petition by the Superintendent, the Supreme Court made an order approving and confirming a private sale of land belonging to an insolvent trust company, it was held that under the circumstances of the case the court thereafter had no power to revoke its first order and make a new one directing that the sale must be at public auction and at a greater price. Matter of Superintendent of Banks, 207 N. Y. 11.

On an application by the Superintendent to the Supreme Court for permission to sell real estate belonging to a bank in his possession, it is not necessary that notice be given to the Attorney-General under Gen. Corp. Law, § 312. Atty.-Gen. Rep., Sept. 29, 1913.

§ 70. Deposit of moneys collected; preference.

The moneys collected by the superintendent shall be from time to time deposited in one or more state banks, savings banks or trust companies and, in case of the insolvency or voluntary or involuntary liquidation of the depositary, such deposits shall be entitled to priority of payment on an equality with any other priority given by this chapter.

Source.—Former § 19, in part, without material change.

As to priorities in general, see § 78, and annotations thereto.

§ 71. Superintendent's power to sue, execute instruments, et cetera, for delinquent; actions and proceedings preferred; exemption from filing fees.

For the purpose of executing any of the powers and performing any of the duties hereby conferred upon him, the superintendent

may, in the name of the delinquent corporation or private or individual banker or personal loan broker, prosecute and defend any and all actions and legal proceedings. Any such action or proceeding, upon application of the superintendent, shall be entitled to the same preference to which an action or proceeding by or against a receiver appointed by the court is entitled in any court of the state. He may, in the name of the delinquent corporation, banker or broker, execute, acknowledge and deliver any and all deeds, assignments, bills of sale, releases extensions satisfactions and other instruments necessary and proper to effectuate any sale, lease or transfer of real or personal property or to carry into effect any power conferred or duty imposed upon him by this article or by order of the supreme court. Any instrument executed pursuant to the authority hereby given shall be as valid and effectual for all purposes as though the same had been executed by the officers of the delinquent corporation by authority of its board of directors, or by the private or individual banker or personal loan broker personally. The superintendent shall not be required to pay any fee to any public officer for filing or recording any paper or instrument executed in pursuance of any power conferred on him by this section.

Source.—Part former § 19. The last sentence is new, as is also the provision for preferring causes upon application of the superintendent.

ACTION PROPERLY BROUGHT IN NAME OF CORPORATION.—An action on a note held by a delinquent corporation is properly brought in its name. *Lafayette Trust Co. v. Higginbotham*, 139 App. Div. 747.

Any action with respect to the property or business of the bank should be brought by or against the corporation, which still retains its corporate existence, as if still managed by its board of directors. *Richardson v. Cheney*, 146 App. Div. 686, 690, affirmed 208 N. Y. 541; *Van Tuyl v. Schwab*, 85 Misc. 172.

MAY SUE AND BE SUED AS RECEIVER.—The superintendent when in possession for purposes of liquidation may sue and be sued in effect as a receiver. *In re Carnegie Trust Co.*, 161 App. Div. 280.

ENFORCEMENT OF MORTGAGE BY SUPERINTENDENT.—The superintendent may maintain an action to enforce a bond and mortgage held by the bank, but the action must be brought in the name of the corporation. If brought in the name of the superintendent the summons and complaint may be amended, but not *nunc pro tunc*. There is no power to amend the *lis pendens* so as to make it operate against intervening rights, but a new notice of *lis pendens* may be filed. It is not necessary to plead the provisions of the Banking Law in the complaint. *Van Tuyl v. N. Y. Real Estate Sec. Co.*, 153 App. Div. 409, affirmed 207 N. Y. 691.

SET-OFF AND COUNTERCLAIM.—In an action by the superintendent against an endorser of a note held by the bank the endorser cannot offset his deposit in the bank against the amount due on the note, if the maker is sol-

vent. *Borough Bank v. Mulqueen* 70 Misc. 137. But see *Curtis v. Davidson*, 150 N. Y. Supp. 305.

An endorser of a note made for his accommodation may set-off his deposit against his liability on such note when sued thereon by the superintendent. *Building & Engineering Co. v. Northern Bank*, 206 N. Y. 400, affirming 151 App. Div. 942.

An endorser when sued on the note may set-off his deposit without showing that the maker is insolvent. The burden is on the plaintiff to show that the maker is solvent. *Carnegie Trust Co. v. Kistler*, 152 N. Y. Supp. 240.

Where in an action against the maker of a note held by the bank, the defendant counterclaims his deposit in the bank, this constitutes a sufficient demand to start interest running on the deposit from that time. *Sickles v. Harold*, 149 N. Y. 332.

In an action by the superintendent to enforce the payment of rent due to an insolvent private banker, the tenant may set-off his deposit with such private banker against the claim for rent. *Mandel v. Koroner*, 149 N. Y. Supp. 455.

Where the holder of a demand note made by a bank demanded payment less than an hour before the closing of the bank, it was held that in an action by the receiver against the holder of the note on a debt due from him to the bank, the defendant was entitled to set-off the note. *Fisher v. Hanover Nat. Bank*, 64 Fed. 832.

POWER TO VERIFY REPLY TO COUNTERCLAIM.—The superintendent or one of his special deputies has power to verify and interpose a reply to a counterclaim in an action brought by him in pursuance of his duties in liquidating the affairs of a bank. *Union Bank v. Kanturk Realty Corp.*, 72 Misc. 96.

§ 72. Notice to creditors to make proof of claims.

When the superintendent shall have taken possession of such corporation or private or individual banker or personal loan broker, and shall have determined to liquidate its affairs he shall notify all persons who may have claims against such corporations, banker or broker, to present the same to him and make proper proof thereof within four months from the date of said notice and at a place specified therein, and shall specify in said notice the last date for presenting said proofs. He shall cause said notice to be mailed to all persons whose names appear as creditors upon the books of the corporation, banker or broker. He shall also cause said notice to be inserted weekly in such newspapers as he may direct for three consecutive months, the first insertion thereof to be published more than ninety days before the last day fixed in said notice for presenting proof of claims. After the date specified in such notice as the last date for presenting proofs of claims the superintendent shall have no power to accept any claim.

Source.—Part former § 19. The time for presenting and making proof of claims cannot be later than four months from the date of notice to creditors; and after this period has expired, the superintendent cannot receive any further claims. These provisions are new.

§ 73. Superintendent to list claims duly presented; when and where filed.

The superintendent shall make in duplicate a complete list of all claims duly presented, and shall specify therein the name of the claimant, the nature of the claim, and the amount thereof. Within ten days after the last date fixed in said notice to creditors to present and make proof of claims, the superintendent shall file one copy of said list in his office, and cause one copy to be filed in the office of the clerk of the county in which the principal office of such corporation or private or individual banker or personal loan broker is located.

Source.—Part former § 19. The provision as to the time within which list must be filed by superintendent is new.

§ 74. Objections to claims presented may be filed with superintendent within certain time; procedure upon claim under objection.

Within thirty days after the last date fixed in said notice to creditors to present and make proof of claims, objections to any claim duly presented may be made by any party interested, by filing with the superintendent such objections in writing, signed by the objector and duly verified. Unless the superintendent rejects any claim to which objections have been duly filed with him, he shall, within thirty days after the time to file such objections has expired, apply to the supreme court, upon notice to the objector, for an order directing the superintendent as to the disposition of said claim. The court may thereupon dispose of said objections or may order a reference for that purpose.

Source.—Part former § 19. The procedure in liquidation has been modified by this section. Objections to the allowance of claims must be made within thirty days from the last day for making proofs. This gives objectors not less than twenty days to examine the list of claims filed by the Superintendent under the provisions of section 74. This provision, and the requirement that the superintendent must act upon objections promptly, were inserted for the purpose of expediting liquidations.

§ 75. Superintendent may accept or reject claims; list of claims accepted to be filed.

The superintendent shall, not later than thirty days after the time has expired to file objections to claims duly presented, accept

or reject every duly filed claim except claims as to which objections are still pending undetermined by the court. Every claim accepted by him, he shall endorse "accepted" and file so endorsed in his office. If he doubts the justice or validity of any claim, he shall reject such claim and shall endorse the same "rejected" and file said claim so endorsed in his office. He shall cause notice of such rejection to be served upon the claimant either personally or by mail. The superintendent shall not determine priorities, in accepting or rejecting claims; but accepted claims shall be presented to the supreme court pursuant to section seventy-eight of this article for determination as to their priority of payment. Within thirty days after the superintendent has accepted or rejected all claims duly filed, he shall list all claims accepted and all rejected by him and file one copy of said list in his office and one copy in the office of the clerk of the county in which the principal office of such corporation or private or individual banker or personal loan broker is located.

Source.—Part former § 19. The limitation on the time within which claims must be acted upon and the requirement as to listing claims are new, as is also the provision prohibiting the superintendent from determining priorities.

Determination of priorities, see § 78.

COURT CANNOT ORDER PAYMENT OF DEPOSIT.—The Supreme Court has no power or jurisdiction to order the superintendent, on an application by a depositor of a bank in the superintendent's possession, to pay over to such depositor the amount of his deposit. *Matter of Peters*, 78 Misc. 453.

COSTS IN ACTION ON REJECTED CLAIM.—Where a claim is rejected and an action is brought thereon, the plaintiff, if successful, is entitled to his costs in full out of the assets of the insolvent with interest thereon from the date of judgment to the time of payment. *In re Carnegie Trust Co.*, 161 App. Div. 230.

INTEREST ON DIVIDEND WHERE CLAIM ESTABLISHED BY ACTION.—Where a rejected claim is established by action, the creditor is entitled to interest on his dividend from the time such dividend was paid to other creditors. *In re Carnegie Trust Co.*, 161 App. Div. 280.

§ 76. Effect of accepting claims; statute of limitations for actions upon claims not accepted; necessary allegations.

When the superintendent has accepted a duly filed claim and has filed the same endorsed "accepted" in his office, the claimant,

unless such claim is entitled by law to priority of payment, shall be entitled to share ratably with other general creditors in the distribution of the assets of such corporation or private or individual banker or personal loan broker as such assets are distributed pursuant to section seventy-eight of this article.

When the time within which the superintendent is required to accept or reject claims has expired and at any time within six months thereafter, a claimant whose claim has been duly filed and has not been accepted by the superintendent may institute and maintain an action thereon against such corporation, banker or broker.

No action shall be maintained against such corporation, banker or broker while the superintendent is in possession of its affairs and business unless brought within the period of limitation specified in this section. In all actions or proceedings instituted against such corporation, banker or broker while the superintendent is in possession of its property and business, the plaintiff shall be required to allege and prove that the claim upon which the action is instituted was duly filed and that sixty days have elapsed since the expiration of time for filing said claim and that said claim has not been accepted.

Source.—Practically new. The six months statute of limitations was contained in former § 19.

FAILURE TO FILE CLAIM.—Depositors who do not prove their claims forfeit their right to share in the distribution. *People v. German Bank*, 136 N. Y. Supp. 311.

ACTION DOES NOT LIE AGAINST SUPERINTENDENT.—An action to enforce a claim against a corporation in the hands of the superintendent must be brought against the corporation and not against the superintendent. *Richardson v. Cheney*, 146 App. Div. 686, affirmed 208 N. Y. 541.

"It seems to be well settled in this state than an action cannot be maintained against the Superintendent of Banks upon a demand existing against a bank which he is liquidating. The Superintendent of banks is merely a custodian, liquidator and conservator of the bank and for the purposes of an action against the bank, the latter is the real party in interest." *Van Tuyl v. Schwab*, 85 Misc. 172.

§ 77. Judgments recovered after superintendent takes possession shall not be liens.

A lien shall not attach to any of the property or assets of such corporation or private or individual banker or personal loan broker

by reason of the entry of any judgment recovered against such corporation, banker or broker after the superintendent has taken possession of its property and business and so long as such possession continues.

Source.—New. The section embodies the rule laid down in *Northern Bank v. Drury*, 152 App. Div. 64. This rule has since been upheld by the Court of Appeals in *Lafayette Trust Co. v. Beggs*, 218 N. Y. 280, affirming 163 App. Div. 959.

JUDGMENT NOT ENTITLED TO PREFERENCE.—A judgment obtained by a general creditor of a savings bank against its receiver in an action that was pending when the receiver was appointed, was held not entitled to a preference over depositors. *People v. Mechanics' and Traders' Sav. Inst.*, 92 N. Y. 7, reversing 28 Hun 375.

§ 78. Dividends to creditors; priorities; disposition of unclaimed dividends.

At any time after the date fixed by the superintendent for the presentation of claims, the supreme court may by order authorize the superintendent upon his application to declare out of the funds remaining in his hands after the payment of expenses, one or more dividends. Such order shall specify what claims, if any, are entitled to priority of payment, and shall direct the superintendent regarding the manner of payment of such prior claims. At any time after the expiration of eight months from said date fixed for the presentation of such claims, he may by like order declare a final dividend. Such dividends shall be paid to such persons, in such amounts, and upon such notice, as the supreme court in the judicial district in which the principal office of such corporation or private or individual banker or personal loan broker is located, may by order direct. Dividends remaining unclaimed or unpaid in the hands of the superintendent for six months after the order for final distribution, shall be deposited by him as provided in section forty-five of this article.

Source.—Part former § 19. The provision for determination of priorities is new. Under the limitations of time within which claims must be presented, actions upon claims instituted, and liquidating officials perform their duties, it is possible to complete the liquidation of an institution within twelve months.

CROSS-REFERENCES.—Priority of assessment and penalties, see § 32.

Priority of unclaimed sums deposited by superintendent, see § 45.

Priority of funds deposited by superintendent acting as liquidators, see § 70.

Prohibition against determination of priorities by superintendent, see § 75.

Preference of depositors in case of insolvency or suspension of private banker, see § 156.

Priority of debts due from trust company in fiduciary capacity, see § 183, subd. 8.

Priority of deposits made by savings bank, see § 278; by savings and loan associations, see § 414; by the land bank, see § 437; by credit unions, see § 456.

Priority of debts due the United States, see U. S. Rev. Stat., § 3468; 2 Fed. Stat. Ann., p. 45.

STATE FUNDS are entitled to preference by virtue of Const. 1894, art. 1, § 16. *Matter of Carnegie Trust Co.*, 206 N. Y. 390; *United States Fidelity and Guaranty Co. v. Carnegie Trust Co.*, 161 App. Div. 429, affirmed 213 N. Y. 629; *United States Fidelity & Guaranty Co. v. Borough Bank*, 161 App. Div. 479, affirmed 213 N. Y. 628.

MUNICIPAL FUNDS are not entitled to preference. *Matter of Northern Bank*, 85 Misc. 594, affirmed 163 App. Div. 974 and 212 N. Y. 608.

SUBROGATION OF SURETY TO PREFERENCE.—A surety on a bond given by a trust company to secure a deposit which is entitled to priority of payment upon paying the amount to the depositor becomes subrogated to the right to preferential payment. *United States Fidelity & Guaranty Co. v. Carnegie Trust Co.*, 161 App. Div. 429, affirmed 213 N. Y. 629; *Same v. Same*, 161 App. Div. 435, affirmed 213 N. Y. 629; *United States Fidelity & Guaranty Co. v. Borough Bank*, 161 App. Div. 479, affirmed 213 N. Y. 628.

FAILURE TO DEMAND A PREFERENCE at the time of filing a claim against the insolvent does not constitute a waiver of the right to such preference in the absence of elements creating an estoppel. *United States Fidelity & Guaranty Co. v. Carnegie Trust Co.*, 161 App. Div. 429, affirmed 213 N. Y. 629.

AGREEMENT NOT TO DRAW OUT DEPOSIT.—A bank discounted notes aggregating \$6,000 for a depositor upon the latter's agreement not to draw out \$2,000 of the amount credited to him until the notes were paid. Accordingly he delivered to the bank his check for \$2,000 payable to its order. The bank accepted the check payable at another bank, and subsequently collected the same and credited the amount back to the depositor's account but without his knowledge. Thereafter the superintendent took possession of the bank and the depositor sued him to recover the \$2,000. It was held that the depositor was not entitled to priority, but must file his claim and share with the other creditors. *Richardson v. Cheney*, 146 App. Div. 686, affirmed 208 N. Y. 541.

CREDITOR OBTAINING IMPROPER PREFERENCE.—Where a depositor has checks outstanding at the time the bank is closed and the same are paid through the clearing house subsequent to such closing, the depositor is not entitled to any dividend until all other creditors have been paid a proportion of their claims equal to the proportion of such depositor's claim that has been paid by the payment of the checks. *People v. Bank of Staten Island*, 70 Misc. 634.

INTEREST.—Interest during the period of administration may be allowed against the corporation if the assets are sufficient for that purpose, but no interest can be allowed upon a preferred claim to the detriment of unpreferred creditors. *People v. American Loan & Trust Co.*, 172 N. Y. 371, affirm-

ing 70 App. Div. 579; *United States Fidelity & Guaranty Co. v. Carnegie Trust Co.*, 161 App. Div. 429, affirmed 213 N. Y. 629; *Same v. Same*, 161 App. Div. 435, affirmed 213 N. Y. 629; *United States Fidelity & Guaranty Co. v. Borough Bank*, 161 App. Div. 579, affirmed 213 N. Y. 628.

APPEAL BY SUPERINTENDENT.—An application by the superintendent to the Supreme Court for a determination of conflicting claims to the bank's assets is a special proceeding and the superintendent, as the representative of the creditors generally, is entitled to appeal from the court's decision giving a preference to a particular creditor. *Matter of Carnegie Trust Co.*, 206 N. Y. 390.

DISTRIBUTION AS OF DATE OF CLOSING.—Distribution of the assets of an insolvent bank or trust company should be made as of the date when they pass into the custody of the law by the appointment of a receiver or otherwise. *People v. American Loan & Trust Co.*, 172 N. Y. 371, aff'g 70 App. Div. 579.

DEPOSITORS AND CREDITORS OF SAVINGS BANKS SHARE RATABLY.—Upon the insolvency of a savings bank the assets of the corporation become a trust fund for its creditors. Depositors stand upon the same basis as other creditors, and share ratably with them and with each other in receiving payment from the insolvent estate. *People v. Mechanics' & Traders' Sav. Inst.*, 92 N. Y. 7, reversing 28 Hun, 375; *People v. Ulster County Sav. Bank*, 64 Hun, 434, aff'd 133 N. Y. 689.

§ 79. Superintendent shall call stockholders' meeting after creditors are paid in full; proceedings at such meeting.

Whenever the superintendent shall have paid to each creditor of any stock corporation whose claim has been duly proved the full amount of such claim, and shall have made proper provision for claims in litigation and not finally determined, and shall have paid all the expenses of liquidation, and shall have returned to stockholders who have paid to him the amounts demanded pursuant to section eighty of this article, their pro rata share of any such amounts not finally necessary to pay creditors in full, he shall call a meeting of the stockholders of such corporation by causing notice of the time and place of such meeting to be published at least once a week for three successive weeks in one or more newspapers selected by him and published in the county where the principal office of such corporation is located. At such meeting, the stockholders shall determine whether the superintendent shall continue as liquidator to wind up the affairs of such corporation, or whether the stockholders themselves shall elect an agent or agents for that purpose. In determining these matters, the stockholders shall vote by ballot in person or by proxy. Each share of stock shall be entitled to one vote and the vote of a majority of the issued stock shall be necessary to a determination. In case it is determined to con-

tinue the liquidation under the superintendent, he shall continue the liquidation of the affairs of such corporation and after paying the expenses thereof, shall distribute the proceeds among the stockholders in proportion to the several holdings of stock and in such manner and upon such notice as may be directed by order of the supreme court. Upon a petition by the superintendent showing that all the assets of such corporation have been duly distributed and that unclaimed sums have been duly deposited by him as provided in section forty-five of this article and that more than one year has elapsed since the last required publication of notice to creditors to present their claims, and upon such notice as the court may prescribe, the supreme court may, on such terms as justice requires, make an order affirming such disposition of such unclaimed sums and declaring such corporation dissolved and the corporate existence thereof terminated. Upon the filing of a certified copy of such order in the office of the superintendent, the existence of such corporation shall cease and determine.

In case the stockholders shall determine to appoint an agent or agents to continue such liquidation, they shall thereupon select by ballot such agent or agents. A majority of the stock present and voting in person or by proxy shall be necessary to determine such question. If such agent or agents shall be duly elected by the stockholders, the superintendent may require such agent or agents to execute and deliver to him a bond to the people of the state, in such amount, with such sureties, and in such form as shall be approved by him, conditioned upon the performance of all the duties of his or their trust; and thereupon the superintendent shall transfer and deliver to such agent or agents all the assets of such corporation then remaining in his hands. Upon such transfer and delivery, the superintendent shall be discharged from any and all further liability to such corporation and its creditors. Upon the transfer and delivery of said assets by the superintendent, he shall file a certified copy of the proceedings of said meeting in his office and cause a certified copy to be filed in the office of the clerk of the county in which the principal office of such corporation was located. No banking powers shall be exercised by such corporation after the superintendent has filed such certified copy in his office.

Source.—Part former § 19. The new section expressly applies to stock corporations only, and consequently there can be no question whether it is

applicable in the liquidation of a savings and loan association, as was the case under the former law. See Atty.-Gen. Rep. (1910) 841.

§ 80. Superintendent may enforce payment of statutory liability of stockholders; notice thereof, and effect of failure to pay at time fixed.

Whenever a liability of stockholders for the amount of their respective shares of any such corporation exists, and the superintendent has duly taken possession of the property and business of such corporation, and has duly notified creditors to present and make proof of their respective claims and the last day to present such claims has expired, and he has determined from his examination of its affairs that the reasonable value of the assets of such corporation is not sufficient to pay its creditors in full, he may enforce the individual liability of such stockholders in whole or in part. In case he determines to enforce such liability, he shall make demand in writing upon such stockholders by causing such demand to be enclosed in sealed envelopes addressed and mailed, postage prepaid, to said respective stockholders at their last known places of address as the same appear upon the stock ledger of such corporation or at their last known address if no address appears in said ledger. Such demand shall state the total amount assessed by the superintendent against the stockholders and the equal and pro rata share assessed against each stockholder for each share of stock, and the total amount of such assessment for all the shares of stock of such stockholder. Such demand shall also fix a date, not earlier than thirty days from the date of such notice, upon which such stockholders shall be required to pay such assessment to the superintendent. In case any such stockholder shall fail or neglect to pay such assessment within the time fixed in said notice, the superintendent shall have a cause of action, in his own name as superintendent of banks, against such stockholder either severally or jointly with other stockholders of such corporation, for the amount of such unpaid assessment or assessments, together with interest thereon from the date when such assessment was, by the terms of said notice, due and payable. In any such action, the written statement of the superintendent, under his hand and seal of office, reciting his determination to enforce the individual liability, or any part thereof, of such stockholders, and setting forth

the value of the assets of such corporation and the liabilities thereof, as determined by him after examination and investigation, shall be presumptive evidence of such facts as therein stated.

Source.—Part former § 19, which merely provided that the superintendent might, "if necessary to pay the debts of such corporation, enforce the individual liability of the stockholders."

CROSS-REFERENCES.—As to liability of stockholders of banks, see § 120; of trust companies, see § 206; of safe-deposit companies, see § 322.

SUPERINTENDENT'S POWER TO ENFORCE.—Under the former law it was held that the superintendent had authority, if necessary, to institute an action in his official capacity to enforce the statutory liability of stockholders, unhampered by any of the limitations contained in the Stock Corporation Law, and notwithstanding that the charter of the company has not been dissolved by judgment. *Van Tuyl v. Scharmann*, 208 N. Y. 53; *Mosler Safe Co. v. Guardian Trust Co.*, 208 N. Y. 524; *Van Tuyl v. Robin*, 80 Misc. 360, aff'd 160 App. Div. 41 and 211 N. Y. 540; *Cheney v. Scharmann*, 145 App. Div. 456.

The present law expressly excludes the limitations contained in the Stock Corporation Law. See §§ 120, 206, 322.

NO ABSOLUTE DUTY TO SUE.—Since this section does not impose an absolute duty on the superintendent to proceed against stockholders, it would seem clear that he could not be held liable for the amount which he might have recovered, had he proceeded against a solvent stockholder within the time limited by statute. See *People v. Staten Island Bank*, 146 App. Div. 378.

CORPORATION NOT NECESSARY PARTY.—In an action by the superintendent to enforce the stockholders' liability, the corporation, while a proper, is not a necessary party. *Van Tuyl v. Scharmann*, 208 N. Y. 53.

STATUTE OF LIMITATIONS.—Under the former Banking Law such actions could be brought within ten years after the accrual of the cause of action. See *Richards v. Gill*, 138 App. Div. 75. The present law expressly provides that the action must be brought within six years. See §§ 120, 206, 322.

PROOF OF INSOLVENCY.—The inventory of assets and lists of claims filed by the Superintendent are admissible to show insolvency. *Richards v. Robin*. (Law Journal, March 27, 1915.)

EXHAUSTION OF ASSETS NOT PREREQUISITE.—It is not necessary to exhaust all the assets of the corporation before bringing the action. *Van Tuyl v. Robin*, 80 Misc. 360, aff'd 160 App. Div. 41 and 211 N. Y. 540; *Persons v. Gardner*, 26 Misc. 663, 62 App. Div. 490; *Barnes v. Arnold*, 23 Misc. 201; *Richards v. Robin*. (Law Journal, March 27, 1915.)

FORM OF ACTION.—In *Cheney v. Scharmann*, 145 App. Div. 456, it was held that, under former § 19, the superintendent could only enforce the liability in an action in equity against all the stockholders. The present section allows him to sue the stockholders either severally or jointly, thus enabling him to bring separate actions at law where the full amount of the liability is required, as is done under the national bank act. See *Casey v. Galli*, 94 U. S. 673.

SUFFICIENCY OF COMPLAINT.—In *Cheney v. Scharmann*, 145 App. Div. 456, it was held that a mere allegation that the superintendent deemed

it necessary to enforce the stockholders' liability, was not sufficient, and that no presumption of the existence of such necessity arose from the fact that the superintendent had taken possession.

For complaints held sufficient under the former Banking Law, see *Van Tuyl v. Scharmann*, 208 N. Y. 53; *Van Tuyl v. Robin*, 80 Misc. 360, *aff'd* 160 App. Div. 41 and 211 N. Y. 540.

PARTIES DEFENDANT.—In an equity action by the superintendent against all the stockholders it is sound equitable practice to bring in as parties defendant all persons who will be affected by the judgment so that the controversy may be adjusted as between all parties. *Richards v. Robin*, 86 Misc. 528.

COUNTERCLAIM.—In maintaining an action against stockholders, the superintendent represents the creditors, and consequently no claim against the corporation can be asserted as a counterclaim against the plaintiff in such action. To permit such a counterclaim would give such defendant a preference over other creditors. *Van Tuyl v. Schwab*, 165 App. Div. 412; *Van Tuyl v. Schwab*, 85 Misc. 172; *Matter of Empire City Bank*, 18 N. Y. 199.

A stockholder who is also a creditor cannot offset the *pro rata* amount that will eventually be paid on his claim, as such amount cannot be determined until final distribution. *Van Tuyl v. Schwab*, 165 App. Div. 412.

INTEREST ON LIABILITY.—In *Mahoney v. Bernhard*, 45 App. Div. 499, *affirmed* 169 N. Y. 589, it was held under the former law that the stockholders' liability could not be extended by allowing interest thereon from the commencement of the action. The present section makes express provision for interest, the purpose of which is to discourage dilatory tactics on the part of stockholders.

CREDITORS' RIGHT TO SUE STOCKHOLDERS.—In *Mosler Safe Co. v. Guardian Trust Co.*, 208 N. Y. 524, it was held that, if the superintendent refused to bring the action, a creditor might do so. The present law expressly so provides. See §§ 120, 206, 322.

§ 81. Superintendent may maintain action against directors, trustees, managers or officers for violation of their official duties.

At any time while the superintendent is in possession of the property and business of any such corporation, he may within six years after the cause of action has accrued institute and maintain in his name as superintendent of banks against its directors, trustees, managers or officers, or any of them, any action or proceeding which is vested in such corporation or in the stockholders or creditors thereof.

Source.—New. See Gen. Corp. Law, §§ 90–92, *post*.

§ 82. Official acts of superintendent and details of department business to be made public.

The superintendent shall keep in his office, in a place accessible to the general public, a bulletin board upon which he shall cause to be posted at noon on Friday, of each week a detailed statement, signed by him or, in case of his absence from Albany or inability

to act, by the deputy superintendent in charge, giving the following items of general information with regard to the work of the department since the preceding statement:

1. The name of every corporation and private and individual banker and personal loan broker whose certificate has been filed for examination in the office of the superintendent, its location and the date of filing of such certificate.

2. The name and location of every corporation and private and individual banker and personal loan broker authorized by the superintendent to commence or continue business, its capital, surplus and the date of authorization.

3. The name of every proposed corporation and private and individual banker and personal loan broker which a certificate of authorization has been refused by the superintendent, and the date of notice of refusal.

4. The name and location of every private banker whose affidavit executed pursuant to section one hundred sixty of this chapter has been filed for examination in the office of the superintendent, and the date of such filing.

5. The name and location of every private banker whose affidavit executed pursuant to section one hundred sixty of this chapter has been accepted or refused by the superintendent, and the date of such acceptance or refusal.

6. The name and location of every private banker, the acceptance of whose affidavit executed pursuant to section one hundred sixty of this chapter has been revoked by the superintendent, and the date of such revocation.

7. The name and location of every private banker, personal loan broker, personal loan company and foreign corporation, whose authorization certificate or license has been revoked by the superintendent, and the date of such revocation.

8. The name of every corporation and private and individual banker and personal loan broker that has been authorized by the superintendent to change its place of business, and the date when and the places from and to which the change is authorized to be made.

9. The name of every corporation that has applied to the superintendent for permission to open a branch office, the date of such application and the location of the proposed branch.

10. The name of every corporation that has been authorized by the superintendent to open a branch office, the date of approval and the location of such branch office.

11. The name and location of every corporation and private banker and personal loan broker authorized by the superintendent to increase or reduce its capital stock or permanent capital, the date of such authorization and the amount of the increase or reduction.

12. The names and locations of all corporations that have merged pursuant to the provisions of this chapter and the dates of such mergers.

13. The name and residence of every person appointed by the superintendent as a deputy, examiner or employee in the banking department, the title of the office to which appointed, the compensation paid and the date of appointment.

14. The date on which a call for a quarterly report by banks, trust companies or private or individual bankers was issued by the superintendent and the day designated as the day with reference to which such report should be made.

15. The name and location of every corporation and private and individual banker and personal loan broker of whose property and business the superintendent shall have taken possession and the date of taking possession, and the name and residence of every person appointed by the superintendent as a special deputy superintendent of banks.

16. The name and location of every corporation and private and individual banker and personal loan broker which shall have been authorized by the superintendent to resume business, and the date of resumption.

17. The name and location of every corporation whose creditors or depositors have been paid in full by the superintendent and a meeting of whose stockholders shall have been called, together with date of notice of meeting and date of meeting.

18. The name and location of every corporation subject to the banking law whose affairs and business shall have been finally liquidated and the corporation dissolved.

19. The name and location of every private and individual banker and personal loan broker whose affairs have been liquidated and business discontinued.

20. The name and location of every corporation which has applied for approval of a change of name, and the name proposed.

Every such statement, after having been so posted for one week, shall be placed on file and kept in the office of the superintendent. All such statements shall be public documents and at all reasonable times shall be open to public inspection.

Source.—Former § 43 with additions.

§ 83. Annual report of superintendent.

The superintendent shall report annually to the legislature as follows:

1. A summary of the state and condition of every corporation and private and individual banker and personal loan broker required to report to him and from which reports have been received during the preceding year, at the several dates to which such reports refer, with an abstract of the whole amount of capital reported by them, the whole amount of their debts and liabilities and the total amount of their resources, specifying in the case of banks, trust companies and private or individual bankers the amount of lawful money held by them at the times of their several reports, and such other information in relation to such corporations and bankers as, in his judgment, may be useful. Such corporations shall be divided into classes so as to correspond with the designations thereof in section two of this chapter.

2. A statement of all corporations and private and individual bankers and personal loan brokers authorized by him to do business during the previous year, with their names and locations and the dates on which their certificates were endorsed "approved" by him and on which their respective authorization certificates were issued, particularly designating such as have commenced business during the year.

3. A statement of the corporations and private and individual bankers and personal loan brokers whose business has been closed either voluntarily or involuntarily, during the year, with the amount of their resources and of their deposits and other liabilities as last reported by them and the amount of unclaimed and unpaid deposits, dividends and interest held by him on account of each.

4. A statement of the amount of interest earned upon all unclaimed deposits, dividends and interest held by him pursuant to the requirements of this chapter.

5. Any amendments to this chapter, which, in his judgment, may be desirable.

6. The names and compensation of the deputies, clerks, examiners, special agents and other employees employed by him, and the whole amount of the expenses of the department during the preceding fiscal year, the amounts appropriated by the legislature for the expenses of the department during such year, and the amount, if any, for which the treasury of the state shall not have been reimbursed at the date of such report.

The first part of such report shall be made on or before the last day of the year, and shall contain all matters herein specified other than the reports of corporations and individuals subject to the provisions of articles five to eleven of this chapter; and the usual number of copies for the use of the legislature shall be printed and in readiness for distribution by the printer employed to print legislative documents, and one thousand copies shall be printed for the use of the department, the expense of which shall be charged to the general expenses of the department. The other parts of such report may be made on or before the fifteenth day of March in each year.

Source.—Former § 25 with additions.

CROSS-REFERENCES.—As to printing the reports, see State Printing Law, §§ 10, 11.

ARTICLE III.**Banks.**

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§ 100. Incorporation; organization certificate; amount of capital stock.

When authorized by the superintendent of banks as provided by section twenty-three of this chapter, five or more persons may form a corporation to be known as a bank. Such persons shall subscribe and acknowledge an organization certificate in duplicate, which shall specifically state:

1. The name by which the bank is to be known.
2. The place where its business is to be transacted.
3. The amount of its capital stock, and the number of shares into which such capital stock shall be divided, which capital stock shall amount to not less than:

(a) Twenty-five thousand dollars, if the place where its business is to be transacted is an incorporated or unincorporated village the population of which does not exceed two thousand;

(b) Fifty thousand dollars, if the place where its business is to be transacted is an incorporated or unincorporated village or a city the population of which exceeds two thousand but does not exceed thirty thousand;

(c) One hundred thousand dollars, if the place where its business is to be transacted is a city the population of which exceeds thirty thousand.

4. The names and places of residences of the incorporators and the number of shares subscribed for by each.

5. The term of its existence which may be perpetual.

6. The number of directors of the bank, which shall not be less than five nor more than thirty, and the names of the incorporators who shall be its directors until the first annual meeting of stock-

holders. The incorporators named as directors must possess the qualifications of directors as to citizenship and residence specified in section one hundred and twenty-three of this article; and the certificate shall recite that such qualifications are possessed by such incorporators.

Such certificate may provide for the manner in which the stock of the corporation may be transferred and for the number of directors necessary to constitute a quorum.

Source.—Former § 60.

CONSTITUTIONAL PROVISIONS AFFECTING BANKS.—Article 8, § 4. Special charters prohibited; § 5. Suspension of specie payment prohibited; § 6. Registration of circulating notes—security for redemption in specie; § 7. Liability of stockholders; § 8. Billholders preferred in case of insolvency.

OTHER STATUTES AFFECTING BANKS.—Banks are subject to all provisions of the General Corporation Law and the Stock Corporation Law, except such as are made inapplicable either expressly or by necessary implication. See Gen. Corp. Law, § 321.

Executive Law, § 82. Publication of notices, etc., in Albany paper; § 101. Appointment of notaries for banks; § 105-a. Notaries who are officers, stockholders, etc.

Tax Law, § 13. Taxation of bank stock, post; § 14. Place of taxation of individual bank capital, post; § 23. Banks to make report, post; § 24. Bank shares, how assessed, post; § 25. Individual banker, how assessed, post; § 26. Notice of assessment, post; § 27. Reports of corporations, post; § 7. Collection of taxes assessed against stocks in banks, post; § 182. Franchise tax, post; § 183. Exemption from tax on capital stock, post; § 191. Tax on foreign bankers, post; § 192. Reports to Comptroller; § 197. Time for payment of tax; § 206. Exemption from other State taxes; § 227. Prohibition against transfer of decedent's assets; § 241. Deposit of taxes by Comptroller.

Penal Law, §§ 290-305, 660-668, post.

CROSS-REFERENCES.—Definition of "bank," see § 2; of "population," see § 3.

Directors, see §§ 122-131.

Similar provisions in case of trust company, see § 180; of savings bank, see § 230 of investment company, see § 290; of safe deposit company, see § 315; of personal loan company, see § 340; of savings and loan association, see § 375; of land bank, see § 421; of credit union, see § 450.

As to qualifications of incorporators, see Gen. Corp. Law, § 4, post.

As to corporate names, see Gen. Corp. Law, § 6, post.

As to amended and supplemental certificates, see Gen. Corp. Law, § 7, post.

As to extension of corporate existence, see Gen. Corp. Law, § 37, post.

Transfer of stock, see Stock Corp. Law, § 50 *et seq.*, post.

STATUTE MUST BE COMPLIED WITH.—To effect a valid organization all the substantial requirements of the act must be complied with. *Valk v. Crandall*, 1 Sandf. Ch. 179.

THE NAMES OF THE PROPOSED INCORPORATORS must be the same as those stated in the notice of intention required by § 101.

Atty.-Gen. Rep. (1909) 716.

CERTIFICATE CANNOT PROVIDE FOR PREFERRED STOCK.—Opinion that certificate of incorporation of State bank cannot provide for the creation of preferred stock. Atty.-Gen. Rep. (1902) 251.

EFFECT OF EXPIRATION OF CORPORATE EXISTENCE.—There is no provision of law permitting the revival of the corporate existence of a bank whose corporate existence has expired. In such case the bank must reincorporate or seek legislative relief. Atty.-Gen. Rep. (1911) vol. 2, p. 3.

PROOF OF CORPORATE EXISTENCE.—In an action by a banking corporation its corporate existence is sufficiently established by proof of due filing of the certificate in the county clerk's office and of its user of corporate powers under color of incorporation. *Leonardsville Bank v. Willard*, 25 N. Y. 574.

TRANSFER WHERE STOCKHOLDER INDEBTED TO BANK.—This question is controlled by section 51 of the Stock Corporation Law, post. Cases dealing with bank stock in this connection are *Gibbs v. Long Island Bank*, 83 Hun 92, aff'd 151 N. Y. 657; *Leggett v. Bank of Sing Sing*, 24 N. Y. 283; *Bank of Attica v. Manufacturers', etc., Bank*, 20 N. Y. 501; *Reynolds v. Bank of Mt. Vernon*, 6 App. Div. 62, aff'd 158 N. Y. 740.

CHANGE OF NAME.—Under Gen. Corp. Law, § 60, post., an application by a banking corporation for leave to change its name must be approved by the superintendent. Atty.-Gen. Rep. (1900) 225; Atty.-Gen. Rep. (1902) 136.

§ 101. Notice of intention to organize; filing, publication and service upon existing banks and trust companies.

At the time of executing such organization certificate, the proposed incorporators shall sign a notice of intention to organize such bank which shall specify their names, the name of the proposed corporation, the amount of its capital stock and its location as set forth in the organization certificate. The original of such notice shall be filed in the office of the superintendent of banks within sixty days after the date of its execution and a copy thereof shall be published at least once a week for four successive weeks in a newspaper designated by the superintendent as provided in section twenty of this chapter, such publication to be commenced within thirty days after such designation. A copy of such notice

shall, at least fifteen days before the organization certificate is filed with the superintendent for examination, be served upon each state bank and trust company organized and doing business in the village, borough or city, if in a city not divided into boroughs, specified as the location of the proposed bank, by mailing such copy, postage prepaid, to said banks and trust companies.

Source.—Former § 61. Filing original notice within sixty days after its execution, and serving copy of notice upon trust companies, are new.

CROSS-REFERENCES.—Duties of superintendent upon receipt of notice of intention, see § 20.

Similar provision as to trust companies, see § 181; as to savings banks, see § 231.

NAMES OF PROPOSED INCORPORATORS.—A notice of intention was published containing five names as proposed incorporators. The organization certificate filed thereafter with the superintendent contained the same five names and five additional names. The Attorney-General was of the opinion that this was not a compliance with the statutory requirements; that the names in the certificate must be identical with those in the notice of intention. Atty.-Gen. Rep. (1909) 716.

§ 102. Submitting organization certificate to superintendent; proof of publication and service of notice of intention.

After the lapse of at least twenty-eight days from the date of the first due publication of the notice of intention to organize and within ten days after the date of the last publication thereof, the organization certificate, executed in duplicate, shall be submitted to the superintendent of banks at his office together with affidavits or other evidence satisfactory to him showing due publication and service of the notice of intention to organize prescribed in section one hundred and one of this article.

Source.—Former §§ 60, 62. The language is new.

CROSS-REFERENCES.—Superintendent prohibited from filing defective certificate, see § 21.

Filing certificate "for examination," see § 22.

Investigation of proposed bank and refusal or approval by superintendent, see § 23.

Issuance of authorization certificate, see § 24.

Similar provisions as to trust companies, see § 182; as to savings banks, see § 232; as to investment companies, see § 290; as to safe deposit companies, see § 315; as to personal loan companies, see § 340; as to savings and loan associations, see § 375; as to land bank, see § 421; as to credit unions, see § 450.

§ 103. When corporate existence begins; conditions precedent to commencing business.

When the superintendent shall have endorsed his approval on the organization certificate as provided by section twenty-three of this chapter, the corporate existence of the bank shall begin, and it shall then have power to elect officers and transact such other business as relates to its organization. But the bank shall transact no other business until:

1. All of its capital stock shall have been fully paid in cash and an affidavit stating that it has been so paid, subscribed and sworn to by its two principal officers, shall have been filed in the clerk's office of the county in which its principal office is located, and a certified copy thereof in the office of the superintendent;
2. It shall have made the deposit with the superintendent required by section one hundred five of this article;
3. The superintendent shall have duly issued to it the authorization certificate specified in section twenty-four of this chapter.

Source.—The provision as to when corporate existence shall begin is new. The requirement that the capital stock shall have been fully paid in cash is taken from former § 68. The requirement of an affidavit that it has been so paid comes from former § 13. The requirement as to the deposit with the superintendent is derived from former § 76. The requirement as to the authorization certificate comes from former § 32.

CROSS-REFERENCES.—Similar provision as to trust companies, see § 183; as to savings banks, see § 233; as to investment companies, see § 291; as to safe deposit companies, see § 316; as to personal loan companies, see § 341; as to savings and loan associations, see § 377; as to land bank, see § 423; as to credit unions, see § 452.

Conditions precedent to transacting business as private banker, see § 152; as personal loan broker, see § 361.

Forfeiture of corporate rights by not commencing business, see § 485.

PROOF OF CORPORATE EXISTENCE.—A deposit of securities with the banking department need not be proved to show corporate existence in an action by the bank. *Leonardsville Bank v. Willard*, 25 N. Y. 574.

§ 104. National bank may become state bank; procedure and effect thereof.

Any banking corporation organized under the laws of the United States and doing business in this state may become an incorporated bank of this state with all the powers and subject to all

the obligations and duties of banks organized under the provisions of this article, provided such banking corporation has authority by virtue of any law of the United States, to dissolve its organization as a national banking corporation. A national banking corporation desiring to become such an incorporated bank of this state shall proceed in the following manner:

1. It shall take such action, in the manner prescribed or authorized by the laws of the United States, as shall make its dissolution as a national banking corporation effective at a future date certain.

2. A majority of its directors shall thereafter and before the time when its dissolution becomes effective, subscribe and acknowledge in duplicate upon the authority in writing of the owners of at least two-thirds of its capital stock, the organization certificate required by section one hundred of this article, and attach thereto copies of the said written authority of stockholders and the resolution fixing the date at which its dissolution as a national banking association shall become effective, executed in the same manner as said certificates.

3. It shall thereupon, and before the time when its dissolution becomes effective, submit such certificate in duplicate, with the authority of stockholders and resolution attached thereto, to the superintendent at his office.

4. If the superintendent shall endorse his approval on the organization certificate as provided in section twenty-three of this chapter, its corporate existence as a state bank shall begin as soon as its dissolution as a national banking corporation becomes effective. But such bank shall transact no business as a state bank other than that relating to its organization until it shall have complied with the conditions precedent to commencing business prescribed by section one hundred three of this article.

At the time when the corporate existence of said state bank begins all the property of the dissolved national banking association, shall immediately by act of law and without any conveyance or transfer be vested in and become the property of such state bank. The directors of the dissolved corporation at the time of such dissolution, shall be the directors of the bank created in pursuance hereof until the first annual election of directors thereafter, and shall have power to take all necessary measures to per-

fect its organization, and to adopt such regulations concerning its business and management as may be proper and not inconsistent with law.

Source.—Former § 82. The procedure is conformed as nearly as possible to that provided for the organization of a state bank.

CROSS-REFERENCES.—Change from state bank to national bank, see § 137.

§ 105. Deposit of securities with superintendent.

Every bank shall, until an order of the supreme court is obtained declaring its business closed, keep on deposit with the superintendent of banks as a pledge of good faith and as a guaranty of compliance with the provisions of this chapter, interest bearing stocks or bonds of this state or of the United States to the amount of one thousand dollars, which shall be registered in the name of the superintendent of banks of the state of New York in trust for such bank. The bank, so long as it shall continue solvent and comply with the laws of the state, may be permitted by the superintendent to collect the interest on the securities so deposited and from time to time to exchange such securities for others as provided by section thirty-five of this chapter, and may examine and compare such securities as provided by section thirty-six of this chapter.

Source.—Former § 76.

CROSS-REFERENCES.—How securities held by superintendent and right to interest thereon, see § 33.

Application of interest or proceeds in payment of assessments or penalties, see § 34.

Exchange of securities and withdrawal of excess, see § 35.

Examination and comparison of securities, see § 36.

Return of securities, see § 37.

Application of this section to individual banker, see § 143.

Deposit of securities by private banker, see § 161; by trust company, see § 184; by domestic investment company, see § 292; by foreign investment company, see § 306.

§ 106. General powers.

In addition to the powers conferred by the general and stock corporation laws, every bank shall, subject to the restrictions and limitations contained in this article, have the following powers:

1. To exercise by its board of directors or duly authorized officers or agents, subject to law, all such incidental powers as shall be necessary to carry on the business of banking; by discounting and negotiating promissory notes, drafts, bills of exchange and other evidences of debt; by receiving deposits; by buying and selling exchange, coin and bullion, and by lending money on real or personal security.

2. To accept for payment at a future date, drafts drawn upon it by its customers and to issue letters of credit authorizing the holders thereof to draw drafts upon it or its correspondents at sight or on time not exceeding one year.

3. To purchase and hold any stocks or bonds or interest-bearing obligations of the United States or of the state of New York or of any city, county, town or village of this state, the interest on which is not in arrears.

4. To purchase and hold, for the purpose of becoming a member of a federal reserve bank, so much of the capital stock thereof as will qualify it for membership in such reserve bank pursuant to an act of congress, approved December twenty-three, nineteen hundred and thirteen, entitled the "federal reserve act"; to become a member of such federal reserve bank, and to have and exercise all powers, not in conflict with the laws of this state, which are conferred upon any such member bank by the "federal reserve act." Such member bank and its directors, officers and stockholders shall continue to be subject, however, to all liabilities and duties imposed upon them by any law of this state and to all the provisions of this chapter relating to banks.

5. To purchase and hold the stock of any safe deposit company organized and existing under the laws of the state of New York and doing business on premises owned or leased by the bank; provided that the purchasing and holding of such stock is first duly authorized by resolution of the board of directors of the bank and by the written approval of the superintendent of banks stating the number and amount of the shares which the bank may purchase and hold.

6. To purchase, hold and convey real property for the following purposes:

(a) A plot whereon there is or may be erected a building or buildings suitable for the convenient transaction of its business,

from portions of which not required for its own use a revenue may be derived.

(b) Such as shall be conveyed to it in satisfaction of debts previously contracted in the course of its business.

(c) Such as it shall purchase at sales under judgments, decrees or mortgages held by it.

7. To receive, upon terms and conditions to be prescribed by the bank, upon deposit for safekeeping, bonds, mortgages, jewelry, plate, stocks, securities and valuable papers of any kind and other personal property, for hire, and to let out receptacles for safe deposit of personal property.

Source.—Former § 66. Subdivisions 2 and 4 are new, as is also the power given in subdivision 1 to lend money on real security. The provisions regarding circulating notes have been omitted. In subdivision 6, paragraph (a) (former subdivision 4, paragraph a) the power to derive revenue from the office building is new. Subdivision 7 is new.

CROSS-REFERENCES.—Powers of trust companies, see § 195, subd. 11.

Powers of corporations in general, see Gen. Corp. Law, §§ 10, 11; acquisition of real property, id. §§ 13, 14.

It would not be proper for the Superintendent of Banks to approve a certificate of incorporation of a bank which provided that such bank "shall have all the powers specified in section 106, except that it may not discount or negotiate promissory notes or other commercial paper." Attorney-General Rep., Aug. 12, 1915.

SUBDIVISION 1.

"TO EXERCISE BY ITS BOARD OF DIRECTORS."—The powers thus conferred relate exclusively to the conduct of the affairs of the bank as a "going concern." No authority appears to be given to the board to wind up the affairs of the bank, or to determine when it shall go into liquidation. *Assets Realization Co. v. Howard*, 70 Misc. 651, 673, affirmed 152 App. Div. 900, and 211 N. Y. 430.

"BY DISCOUNTING."—The purchase of a promissory note for a sum less than its face is a "discount" within the meaning of this section. *Atlantic State Bank v. Savery*, 82 N. Y. 291.

BY RECEIVING DEPOSITS.—Banks and trust companies may accept deposits made upon condition that notice in writing may be required a specified number of days before withdrawal. Such deposits may, with the consent of the bank or trust company be withdrawn without notice. Such action is not in violation of section 290 of the Penal Law unless it is pursuant to an agreement to that effect made at or before the time of the deposit. Atty.-Gen. Rep., April 9, 1914.

Held that under this a bank had authority to receive from depositors and dealers uncurrent bank notes or bills of other banks at a discount equal to the current rate of exchange. *People v. Metropolitan Bank*, 7 How. Pr. 144.

EFFECT OF LOAN ON UNAUTHORIZED SECURITY.—The fact that a bank has lent money on a kind of security which it is not authorized to receive will not entitle the borrower to recover the proceeds of such collateral after it has been sold by the bank upon nonpayment of the loan. *National Bank v. Stewart*, 107 U. S. 676.

INCIDENTAL POWERS.—The power to receive special deposits is incidental to the business of banking. The term "special deposits" includes money, securities and other valuables delivered to banks, to be specially kept and redelivered. *Pattison v. Syracuse Nat. Bank*, 80 N. Y. 82.

An agreement by a bank to procure a release of a mortgage held by a third person, although not primarily an agreement relating to banking, if made to secure the payment of a debt due to the bank, is not *ultra vires*. *McCrath v. Nat. Mohawk Val. Bank*, 104 N. Y. 414.

POWER TO TAKE TITLE TO SECURITIES.—A banking corporation necessarily has power to take title to such securities as it is allowed to transfer to the superintendent. *Comstock v. Willoughby, Lalor*, 271.

THE POWER TO BORROW MONEY is incidental to the banking business, as is the power to issue the obligations of the bank payable at a future day to secure the loan. *Curtis v. Leavitt*, 15 N. Y. 9.

A bank can borrow money for such purposes only as relate to the ordinary business of a bank. *Leavitt v. Yates*, 4 Edw. Ch. 134.

The cashier of a bank has, as incident to his office, implied authority to borrow money for it and, in the absence of any statutory restraint, to pledge its property or funds as security for the loan. *Coats v. Donnell*, 94 N. Y. 168.

POWERS EXCLUDED.—A banking corporation has no power to subscribe for the stock of a railroad corporation. "The language employed in the act defines their powers and duties, and excludes by necessary implication a capacity to carry on any other business than that of banking, and the adoption of any other methods for the prosecution of such business than those specifically pointed out by the statute." *Nassau Bank v. Jones*, 95 N. Y. 115.

It is no part of the general business of a bank to act as an agent in selecting attorneys and compromising claims for outside parties. *Ryan v. Manufacturers, etc., Bank*, 9 Daly 308.

A bank has no power to make an accommodation endorsement of a note which it does not own and in which it has no interest. *Morford v. Farmers' Bank*, 26 Barb. 568.

SUBDIVISION 2

The power granted by this subdivision to deal in acceptances is much broader than the acceptance provisions of the federal reserve act, which reads as follows (section 13): "*Any member bank may accept drafts or bills of exchange drawn upon it and growing out of transactions involving the importation or exportation of goods having not more than six months sight to run; but no bank shall accept such bills to an amount equal at any time in the aggregate to more than one-half its paid-up capital stock and surplus.*"

SUBDIVISION 3

PURCHASE OF STOCKS OF OTHER STATES.—A bank has no power to deal in stocks of other States, except to take them as security for loans or in payment of loans or debts. *Talmadge v. Pell*, 7 N. Y. 328; *Bank Commissioners v. St. Lawrence Bank*, 7 N. Y. 513; *Austin v. Daniels*, 4 Denio 299.

Notes payable with interest at a future date, given by a bank in payment for the stocks of another State, held void. *Bank Commissioners v. St. Lawrence Bank*, 7 N. Y. 513.

COLLATERAL.—A bank lent money upon the security of a certificate of stock. The loan not being paid, the bank undertook to sell the collateral but it turned out that the certificate had been fraudulently issued, and the purchaser refused to take it. The bank having sued the corporation to compel a transfer to it of the stock on the latter's books, it was held that defendant could not set up that the stock was not a security which the bank was empowered to take and hold. "That question could only be raised by the State authorities." *Fifth Ave. Bank v. Forty-Second St., etc., R. Co.*, 17 N. Y. Supp. 826, *aff'd* 137 N. Y. 231.

SUBDIVISION 4.

See §§ 112 and 197, regarding reserve requirements of banks and trust companies joining federal reserve system. The purpose of the revisers in incorporating these provisions was to encourage support of the federal experiment represented by the federal reserve bank plan.

SUBDIVISION 6.

POWER TO ASSIGN OR CONVEY PROPERTY.—A bank may assign or convey any property held by it and may enter into the common covenants of guaranty or warranty, on making such assignment or conveyance. *Talman v. Rochester City Bank*, 18 Barb. 123.

SUBDIVISION 7.

Where, upon payment of a loan, the bank, instead of returning the collateral, gives the owner a receipt stating that it retains such collateral for use as security for loans that may be thereafter made, or for safekeeping, subject to the owner's order, the bailment is one for mutual benefit and the bank is liable for failure to exercise ordinary and reasonable care and diligence in the safe-keeping of such collateral. *Onderdirk v. Central Nat. Bank*, 119 N. Y. 263.

Note.—The special remedies given by § 331 apply exclusively to safe deposit companies and consequently these matters should be covered by contract.

§ 107. Restrictions on taking and holding real estate.

All real estate purchased by any bank or taken by it in settlement of debts due it, shall be conveyed to it directly by name and the conveyance immediately recorded, in the office of the proper recording officer of the county in which such real estate is located.

Every parcel of real estate purchased or acquired by any bank shall be sold by it within five years of the date on which it shall have been acquired unless:

1. There shall be a building thereon occupied by it as an office; or

2. The superintendent of banks, on application of its board of directors, shall have extended the time within which such sale shall be made.

Source.—The provision requiring conveyances to the corporation by name is taken from former § 66. The rest of the section is new. The requirement that real estate shall be sold within five years is similar to the provision contained in subdivision 2 of former section 148 (now § 240) relating to savings banks.

CROSS-REFERENCES.—Similar provisions as to private bankers, see § 163; as to trust companies, see § 789; as to savings banks, see § 240; as to savings and loan associations, see § 387.

RIGHT TO HAVE DEED RECORDED.—If a bank offers a deed for registration, the register is not entitled to refuse to record it unless the bank will give him an affidavit stating whether such deed is absolute or intended as a mortgage. *Matter of Mechanics' Bank*, 156 App. Div. 346.

§ 108. Restrictions on loans, purchases of securities and total liabilities to bank of any one person.

A bank subject to the provisions of this article

1. Shall not directly or indirectly lend to any individual, partnership, unincorporated association, corporation, or body politic, an amount which, including therein any extension of credit to such individual, partnership, unincorporated association, corporation or body politic, by means of letters of credit or by acceptance of drafts for, or the discount or purchase of the notes, bills of exchange or other obligations of, such individual, partnership, unincorporated association, corporation or body politic, will exceed one-tenth part of the capital stock and surplus of such bank, with the following exceptions:

(a) The restrictions in this subdivision shall not apply to loans to, or investments in the interest bearing obligations of, the United States, this state or any city, county, town or village of this state.

(b) If such bank is located in a borough having a population of two millions or over, the total liability to such bank, of any state other than the state of New York, or of any foreign nation, or of a municipal or railroad corporation, or of a corporation subject to the jurisdiction of a public service commission of this state, may equal but not exceed twenty-five per centum of the capital and surplus of such bank; and the total liabilities to such bank of any

individual, partnership, unincorporated association, or of any other corporation or body politic, may equal but not exceed twenty-five per centum of the capital and surplus of such bank, provided such liabilities are upon drafts or bills of exchange drawn in good faith against actually existing values, or upon commercial or business paper actually owned by the person negotiating the same to such bank, and are endorsed by such person without limitation, or provided such liabilities in excess of ten per centum of such capital and surplus, and not in excess of an additional fifteen per centum of such capital and surplus, are secured by collateral having an ascertained market value of at least fifteen per centum more than the amount of the liabilities so secured.

(c) If such bank is located elsewhere in the state, the total liability to such bank of any state other than the state of New York, or of any foreign nation, or of a municipal or railroad corporation, or of a corporation subject to the jurisdiction of a public service commission of this state, may equal but not exceed forty per centum of the capital and surplus of such bank; and the total liabilities to such bank of any individual, partnership, unincorporated association, or of any other corporation or body politic, may equal but not exceed forty per centum of the capital and surplus of such bank, provided such liabilities are upon drafts or bills of exchange drawn in good faith against actually existing values, or upon commercial or business paper actually owned by the person negotiating the same to such bank, and are endorsed by such person without limitation, or provided such liabilities in excess of ten per centum of such capital and surplus, and not in excess of an additional thirty per centum of such capital and surplus, are secured by collateral having an ascertained market value of at least fifteen per centum more than the amount of the liabilities so secured.

(d) In computing the total liabilities of any individual to a bank there shall be included all liabilities to the bank of any partnership or unincorporated association of which he is a member, and any loans made for his benefit or for the benefit of such partnership or association; of any partnership or incorporated association to a bank there shall be included all liabilities of its individual members and all loans made for the benefit of such partnership or unincorporated association or any member thereof; and of

any corporation to a bank there shall be included all loans made for the benefit of the corporation.

2. Shall not take or hold at any one time, more than ten per centum of the total capital stock of another moneyed corporation as collateral security for loans.

3. Shall not make any loan upon the securities of one or more corporations the payment of which loan is undertaken in whole or in part severally, but not jointly, by two or more individuals, firms or corporations:

(a) If the prospective borrowers or underwriters be obligated absolutely or contingently to purchase the securities, or any of them, collateral to the proposed loan, unless they shall have paid on account of the purchase of such securities an amount in cash or its equivalent equal to at least twenty-five per centum of the several amounts for which they remain obligated in completing the purchase;

(b) If the bank considering the making of the loan be liable directly, indirectly or contingently, for the repayment of the proposed loan or any part thereof;

(c) If the term of the proposed loan, including any renewal thereof, by agreement, express or implied, exceeds the period of one year;

(d) If the amount, under any circumstances, exceeds twenty-five per centum of the capital and surplus of the bank.

4. Shall not make a loan, directly or indirectly, upon the security of real estate if

(a) Such real estate is subject to a prior mortgage, lien or incumbrance, and the amount unpaid upon such prior mortgage, lien or incumbrance, or the aggregate amount unpaid upon all prior mortgages, liens and incumbrances exceeds ten per centum of the capital and surplus of such bank, or if the amount so secured, including all prior mortgages, liens and incumbrances exceeds two-thirds of the appraised value of such real estate as found by a committee of the directors of such bank;

(b) The bank has its principal place of business in a borough of any city in the state which borough has a population of two millions or more, and the total direct and indirect loans by the bank upon real estate security exceed, or by the making of such loan, will exceed fifteen per centum of the total assets of the bank;

(c) The bank has its principal place of business in a village which has a population of not more than fifteen hundred, and in which there is no savings bank, and the total loans by the bank upon real estate security exceed, or by the making of such loan will exceed, forty per centum of its total assets;

(d) The bank has its principal place of business elsewhere in the state, and its total direct and indirect loans upon real estate security exceed, or by the making of such loans will exceed, twenty-five per centum of its total assets.

The limitations and restrictions contained in this subdivision shall not prevent the acceptance of any real estate securities to secure the payment of a debt previously contracted in good faith, but every mortgage and every assignment of a mortgage taken or held by such bank shall immediately be recorded in the office of the clerk or the proper recording officer of the county in which the real estate described in the mortgage is located.

5. Shall not, nor shall any of its directors, officers, agents or servants, directly or indirectly, purchase or be interested in the purchase of any promissory note or other evidence of debt issued by it, for less than its face value. Every bank or person violating the provisions of this subdivision shall forfeit to the people of the state three times the face value of the note or other evidence of debt so purchased.

6. Shall not make any loan or discount on the security of the shares of its own capital stock, or be the purchaser or holder of any such shares, unless such security or purchase shall be necessary to prevent loss upon a debt previously contracted in good faith, and stock so purchased or acquired shall be sold at public or private sale, or otherwise disposed of, within six months from the time of its purchase or acquisition. Any bank violating any of the provisions of this subdivision shall forfeit to the people of the state twice the amount of the loan or purchase.

7. Shall not knowingly lend, directly or indirectly, any money or property for the purpose of enabling any person to pay for or hold shares of its stock, unless the loan is made upon security having an ascertained or market value of at least fifteen per centum more than the amount of the loan. Any bank violating the provisions of this subdivision shall forfeit to the people of the state twice the amount of the loan.

8. Shall not, nor shall any officer thereof, lend directly or indirectly any sum of money to any officer, director, clerk or employee of the bank without the written approval of a majority of the board of directors thereof, filed in the office of the bank or embodied in a resolution adopted by a majority vote of such board exclusive of the director to whom the loan is made, or in any event to any officer thereof, if such bank is located in a city of the first class; and if any such officer, director, clerk or employee shall own or control a majority of the stock of any other corporation a loan to that corporation shall be considered for the purpose of this subdivision as a loan to him. Every bank or officer thereof violating this provision shall, for each offense, forfeit to the people of the state twice the amount lent.

Source.—Former § 27 rewritten.

CROSS REFERENCES.—Restrictions on officers, directors and employees, see § 139.

Similar provisions as to trust companies, see § 190.

SUBDIVISION 1.

INCLUDES MUNICIPAL CORPORATIONS.—The word "corporation" includes municipal corporations, and a bank cannot loan a greater amount to a municipal corporation than to any other corporation. Atty.-Gen. Rep. (1907) 471.

LIMITATION NOT TO BE EVADED.—The limitation on the amount that may be loaned to a single corporation cannot be avaded by taking the notes of individual officers or directors of corporations and crediting the proceeds to the corporations. Atty.-Gen. Rep. (1908) 399.

EFFECT OF MAKING EXCESSIVE LOAN.—Where the president of a bank, through an abuse of his official position, became indebted to the bank for an amount in excess of that which the bank was authorized to loan to a single person, it was held that a mortgage given by him to the bank to secure such indebtedness was not on that account invalid. *Dunn v. O'Connor*, 25 App. Div. 73.

In an action by the bank to recover money loaned the debtor cannot set up in defense that the amount was in excess of that which the bank had authority to lend. *Gold-Mining Co. v. National Bank*, 96 U. S. 640.

MORTGAGE FROM PRESIDENT OF BANK.—A mortgage taken by a bank from its president to secure a debt which he has incurred to it by an abuse of his official position is not invalid under this section, although the amount of the debt thereby secured is in excess of the amount which the bank may properly loan to one person under the latter section. *Dunn v. O'Connor*, 25 App. Div. 73.

WHAT SECURITY REQUIRED.—Loans not exceeding one-tenth of capital and surplus are not required to be upon security; and in the case of larger loans only the excess above said one-tenth need be secured by collateral worth at least 15 per cent. more than the amount secured thereby. Atty.-Gen. Rep. (1900) 167.

PRESIDENT'S LIABILITY FOR TAKING INSUFFICIENT COLLATERAL.—Where collateral not worth 15 per cent. more than the amount of the loan is negligently accepted by the president, the bank may recover of him its damages resulting from such negligence; and the board of directors cannot deprive the bank of its right of action by ratifying the president's act. *Seventeenth Ward Bank v. Smith*, 51 App. Div. 259.

"BILLS OF EXCHANGE DRAWN IN GOOD FAITH," ETC.—Under U. S. Rev. Stat., § 5200, which uses the same language, it was held that drafts drawn by P. & Co., consignors of lumber upon W. & Co., consignees, both of which firms were composed of the same members, though their business was separate and distinct, were "bills of exchange drawn in good faith against actually existing values." *Second Nat. Bank v. Burt*, 93 N. Y. 233.

"COMMERCIAL OR BUSINESS PAPER ACTUALLY OWNED."—Opinion that this means paper actually issued in due course of business and duly endorsed by the person who negotiates it. Mere accommodation paper and notes placed in the hands of a note broker for sale upon the advance by the note broker of the difference between the face value of the notes and the agreed commission or discount are not within the meaning of this language. Atty.-Gen. Rep. (1911), vol. 2, p. 511.

Commercial or business paper actually owned by the person negotiating the same may lawfully be discounted to the extent of 25 per cent. of capital and surplus, even though it bear an accommodation endorsement, but accommodation paper may be discounted only to the extent of one-tenth of capital and surplus. Atty.-Gen. Rep. (1904) 220.

FOR AN INDICTMENT OF A DIRECTOR for violation of this subdivision, see *People v. Knapp*, 106 N. Y. 374.

SUBDIVISION 4.

A MORTGAGE GIVEN TO THE CASHIER to secure an indebtedness to the bank was held to be a valid security in favor of the bank. *Lawrenceville Cement Co. v. Parker*, 39 N. Y. St. Rep. 864, aff'd 133 N. Y. 622.

SUBDIVISION 6.

LIEN ON STOCK FOR STOCKHOLDER'S DEBT TO BANK.—This provision relates to security taken and held upon which the bank obtains a lien which it may enforce in the event of a default by the debtor. It has no application in a case where a bank, pursuant to Stock Corp. Law, § 51, refuses to allow the transfer of the debtor's stock until the indebtedness is discharged. *Strahmann v. Yorkville Bank*, 148 App. Div. 8, affirmed 210 N. Y. 536.

Note.—An exception exists in § 496 which permits a corporation to purchase the stock of dissenting stockholders in case of merger.

SUBDIVISION 8.

EFFECT OF VIOLATION.—Violation of this provision does not render void a note given by the officer to the bank. The bank may recover thereon against the maker and endorser. *People's Trust Co. v. Pabst*, 113 App. Div. 375, affirmed 190 N. Y. 534.

LOAN TO PRESIDENT.—In *Reynolds v. Bank of Mt. Vernon*, 6 App. Div. 62, affirmed 158 N. Y. 740, it was held that the directors could authorize the president to make loans to himself. But under the present language no loans at all may be made to officers of a bank located in a city of the first class.

§ 109. Restrictions as to entries in books; amortization of securities.

1. No bank shall by any system of accounting or any device of bookkeeping, directly or indirectly enter any of its assets upon its books in the name of any other individual, partnership, unincorporated association or corporation, or under any title or designation that is not truly descriptive thereof.

2. The stocks, bonds and other interest-bearing corporate securities purchased by a bank shall be entered on its books at the actual cost thereof, and for the purpose of calculating the undivided profits applicable to the payment of dividends, such stocks and securities shall not be estimated at a valuation exceeding their present cost as determined by amortization, that is, by deducting from the cost of any such stock or security purchased for a sum in excess of the amount payable thereon at maturity, and charging to profit and loss, a sufficient sum to bring it to par at maturity, or adding to the cost of any such stock or security purchased at less than the amount payable thereon at maturity, and crediting to profit and loss, a sufficient sum to bring it to par at maturity; but nothing herein contained shall prevent a bank from carrying such stocks, bonds and other interest-bearing corporate securities on its books at their market value.

3. No bank shall, except with the written approval of the superintendent, enter or at any time carry on its books the real estate and the building or buildings thereon, used by it as its place or places of business, at a valuation exceeding their actual cost to such bank.

4. Every bank shall conform its methods of keeping its books and records to such orders in respect thereto as shall have been made and promulgated by the superintendent pursuant to section

fifty-six of this chapter. Any bank that refuses or neglects to obey such order shall be subject to a penalty of one hundred dollars for each day it so refuses or neglects.

5. Every bank holding any funds or money paid into court shall keep a book or books in which it shall make an exact account thereof. Such book or books shall state the name of the court, the title of the case, the date of receipt, from whom received, the amount of money, if any, and a description of the securities or other property received, if any, and each addition of interest; also the date and description of each order for payment and the dates and amounts of payments thereunder and to whom paid; also an account of each change of investment if any.

Source.—Subdivisions 1, 2 and 3 are new. Subdivision 4 is derived from former § 8, and subdivision 5 from former § 45.

Note.—The purpose of the amortization requirement in subdivision 2 is to prevent the payment of dividends out of paper profits.

CROSS-REFERENCES.—For similar restrictions on private bankers, see § 165; on trust companies, see § 194; on savings banks, see § 246; on investment companies, see § 295; on safe deposit companies, see § 320; on personal loan companies and personal loan brokers, see § 367; on savings and loan associations, see § 391.

§ 110. Restriction on branch offices; penalty for violation.

No bank, or any officer or director thereof, shall transact its usual business of banking at any place other than its principal place of business except that a bank in a city which has a population of more than one million, may open and occupy in such city one or more branch offices for the receipt and payment of deposits and for making loans and discounts to customers of such respective branch offices only, provided that before any such branch or branches shall be opened or occupied:

1. The superintendent shall have given his written approval, as provided in section fifty-one of this chapter;

2. The actual paid in capital of such bank shall exceed by the sum of one hundred thousand dollars the amount required by section one hundred of this article for each branch opened since the twenty-seventh day of April, nineteen hundred and eight; and by the sum of fifty thousand dollars for each branch opened previous to said date and hereafter maintained.

Any bank having a combined capital and surplus of one million dollars or over, may with the written approval of the superintendent open and occupy a branch office or branch offices in one or more places located without the state of New York, either in the United States of America or in foreign countries.

Every bank and every such officer violating the provisions of this section shall forfeit to the people of the state the sum of one thousand dollars for every week during which any branch office shall hereafter be open or occupied in violation of this section.

Source.—Former § 109. The provision for foreign branches is new.

CROSS-REFERENCES.—Powers and duties of superintendent in regard to branch offices, see § 51.

Change of location, see § 119.

Application of this section to individual bankers, see § 143.

Similar provision as to trust companies, see § 195; as to savings banks, see § 245; as to safe deposit companies, see § 318; as to personal loan companies, see § 349.

§ 111. Restrictions on deposit of bank's funds.

No bank shall deposit any of its funds with any other moneyed corporation unless the latter has been designated as a depository for the bank's funds by a vote of a majority of the directors of the bank exclusive of any director who is an officer, director or trustee of the depository so designated.

Source.—Former § 27, subd. 5.

CROSS-REFERENCES.—Similar provision as to trust companies, see § 196; as to savings banks, see § 244; as to investment companies, see § 294.

§ 112. Reserves against deposits.

Every bank shall maintain total reserves against its aggregate demand deposits, as follows:

1. Eighteen per centum of such deposits if such bank has an office in a borough having a population of two millions or over; and at least twelve per centum of such deposits shall be maintained as reserves on hand, except as otherwise provided in this section.

2. Fifteen per centum of such deposits, if such bank is located in a borough having a population of one million or over and less than two millions, and has not an office in a borough specified in subdivision one of this section; and at least ten per centum of such deposits shall be maintained as reserves on hand.

3. Twelve per centum of such deposits if such bank is located elsewhere in the state; and at least four per centum of such deposits shall be maintained as reserves on hand.

At least one half of the reserves on hand shall consist of gold, gold bullion, gold coin, United States gold certificates or United States notes; and the remainder shall consist of any form of currency, other than federal reserve notes, authorized by the laws of the United States.

If any bank shall have become a member of a federal reserve bank, it may maintain as reserves on deposit with such federal reserve bank such portion of its total reserves as shall be required of members of such federal reserve bank; and if such bank has an office in a borough having a population of two millions or over, the remainder of its total reserves shall be carried as reserves on hand.

If any bank shall fail to maintain its total reserves in the manner authorized by this section, it shall be liable to, and shall pay the assessment or assessments provided for in section thirty of this chapter.

Source.—Former § 67. Both the language and the substance of this section are practically new. The term "lawful money reserve" used in the former law has been discarded as misleading, inasmuch as it included deposit credits and other items which could not be classed as "lawful money." In place thereof the revisers substituted "total reserves" which includes "reserves on hand" and "reserves on deposit." The changes from the reserve requirements of the former law were made to meet the provisions of the federal reserve act. The cities described by population in subdivisions 1, 2, and 3 of the present section correspond so far as such general language can make them with the terms central reserve cities, reserve cities, and those outside of reserve cities, used in the federal reserve act. The reserves on hand in the larger cities are higher under the state law than the requirements of the federal reserve act. See Federal Reserve Act, § 19. See also, *ante*, note to § 106, subd. 4.

The following table shows the changes in the percentages of aggregate demand deposits which must be retained as total reserves and reserves on hand:

	OLD LAW.		NEW LAW.	
	Total reserves.	On hand.	Total reserves.	On hand.
Manhattan	25	15	18	12
Brooklyn	20	10	15	10
Other Boroughs	15	7½	12	4
Elsewhere	15	6	12	4

Brooklyn banks that have branches in Manhattan are subject to the same requirements as Manhattan banks. See also note to § 197.

CROSS-REFERENCES.—Definitions of “aggregate demand deposits,” “reserves on hand,” “reserves on deposit,” “total reserves,” “reserve depository” and “population,” see § 3.

Assessments for encroachments on reserves, see § 30.

Designation of reserve depositories, see § 38.

Application of this section to individual bankers, see § 143.

Similar provision as to private bankers, see § 166; as to trust companies, see § 197.

§ 113. Interpleader in certain actions; costs.

1. In all actions against any bank to recover for moneys on deposit therewith, if there be any person or persons, not parties to the action, who claim the same fund, the court in which the action is pending, may, on the petition of such bank, and upon eight days' notice to the plaintiff and such claimants, and without proof as to the merits of the claim, make an order amending the proceedings in the action by making such claimants parties defendant thereto; and the court shall thereupon proceed to determine the rights and interests of the several parties to the action in and to such funds. The remedy provided in this section shall be in addition to and not exclusive of that provided in section eight hundred and twenty of the code of civil procedure.

2. The funds on deposit which are the subject of such an action may remain with such bank to the credit of the action until final judgment therein, and be entitled to the same interest as other deposits of the same class, and shall be paid by such bank in accordance with the final judgment of the court; or the deposit in controversy may be paid into court to await the final determination of the action, and when the deposit is so paid into court such

bank shall be struck out as a party to the action, and its liability for such deposit shall cease.

3. The costs in all actions against a bank to recover deposits shall be in the discretion of the court, and may be charged upon the fund affected by the action.

Source.—Former § 145, relating to savings banks. The new law extends this provision to banks and trust companies.

CROSS-REFERENCES.—Similar provision as to trust companies, see § 199; as to savings banks, see § 250.

For decisions construing former § 145, see the notes to § 250.

§ 114. Rate of interest; effect of usury.

Every bank and every private and individual banker may take, receive, reserve and charge on every loan and discount made, or upon any note, bill of exchange or other evidence of debt, interest at the rate of six per centum per annum; and such interest may be taken in advance, reckoning the days for which the note, bill or evidence of debt has to run. The knowingly taking, receiving, reserving or charging a greater rate of interest shall be held and adjudged a forfeiture of the entire interest which the note, bill of exchange or other evidence of debt carries with it, or which has been agreed to be paid thereon. If a greater rate of interest has been paid, the person paying the same or his legal representatives may recover twice the entire amount of the interest thus paid from the bank or banker taking or receiving the same, if such action is brought within two years from the time the excess of interest is taken. The purchase, discount or sale of a bona fide bill of exchange, note or other evidence of debt payable at another place than the place of such purchase, discount or sale at not more than the current rate of exchange for sight draft, or a reasonable charge for the collection of the same, in addition to the interest, shall not be considered as taking or receiving a greater rate of interest than six per centum per annum. The true intent and meaning of this section is to place and continue such banks and bankers on an equality in the particulars herein referred to with the national banks organized under the act of congress entitled "An act to provide a national currency, secured by pledges of United States

bonds, and to provide for the circulation and redemption thereof," approved June the third, eighteen hundred and sixty-four.

Source.—Former § 74. The only change is the insertion of the word "entire" before the word "amount." The former section was modeled upon U. S. Rev. Stat. §§ 5197, 5198.

CROSS-REFERENCES.—Similar provision as to trust companies, see § 200. Penalty for taking security for usurious loans, see Penal Law, § 2400, post.

PRIVATE BANKERS INCLUDED.—The use of the words "private and individual banker" brings within the operation of this section persons and firms engaged in the banking business without authority under the Banking Law. *Perkins v. Smith*, 116 N. Y. 441, aff'g 41 Hun 47; *Carley v. Tod*, 83 Hun 53; *Spaulding v. Kelly*, 43 Hun 301.

That one is a private banker and within the protection of this section is sufficiently established, *prima facie*, by testimony of his clerk that he is a private banker, that he is so described on his office door, that he issued a pass book so describing him, and that he was also so described on the checks drawn upon him. *Matter of Thornburgh*, 72 Misc. 619.

In an action by a private banker, his own testimony that his business was "banking, private banker," was held sufficient to show that he was entitled to the protection of this section. *Hessberg v. Matter*, 64 Misc. 97.

WHO ARE BANKERS.—Note brokers, who make loans to their customers on the security of the notes held for sale, are bankers within the meaning of this section. In *re Wilde's Sons*, 133 Fed. 562.

This section does not protect the members of an unincorporated association whose sole business is that of loaning money upon assignments of wages, and upon chattel mortgages. Such association is not a banker. *People v. Young*, 207 N. Y. 522.

HOW FAR GENERAL USURY LAW SUPERSEDED—As to banks and private and individual bankers, this section, within its limits, supersedes the general statutes dealing with usury (Gen. Bus. Law, §§ 370-382). There is no forfeiture of principal. *People v. Young*, 153 App. Div. 567, aff'd 207 N. Y. 522; *Schlesinger v. Kelly*, 114 App. Div. 546; *Empire Trust Co. v. Coleman*, 85 Misc. 312; *Public Bank v. London*, 147 N. Y. Supp. 738; *Hessberg v. Matter*, 64 Misc. 97; *Matter of Thornburgh*, 72 Misc. 619; *Spaulding v. Kelly*, 43 Hun 301; *Bank of Monroe v. Findlay*, 6 Hun 584, *Farmers Bank v. Hall*, 15 Abb. Pr., N. S., 276; *Farmers, etc., Bank v. Deering*, 91 U. S. 29; In *re Wilde's Sons*, 133 Fed. 562.

"The effect of this legislation, as is well known, was and is, to place State banks and private and individual bankers within the State on the same footing as National banks in respect to usurious loans or discounts; so that only double the amount of the interest is recoverable in such cases, but the entire loan is not rendered void by reason of the usury." *People v. Young*, 207 N. Y. 522, 528.

NOTE VOID BETWEEN ORIGINAL PARTIES.—A promissory note, void for usury as between the original parties, is valid and enforceable when dis-

counted by a bank for value, before maturity, in due course of business, and without notice of its usurious inception. *Schlesinger v. Gilhooly*, 189 N. Y. 1, aff'g 116 App. Div. 914; *Schlesinger v. Kelly*, 114 App. Div. 546.

Where a note, void in the hands of the holder, because of usury, is purchased by the bank with knowledge of the usury, it is also void in the hands of the bank, notwithstanding this section. *Schlesinger v. Lehmaier*, 191 N. Y. 69, rev'g 117 App. Div. 428.

WHERE THE USURIOUS INTEREST HAS NOT BEEN PAID, the defendant may obtain the benefit of the forfeiture by setting it up as a partial defense in an action on the note. *Carnegie Trust Co. v. Chapman*, 153 App. Div. 783.

WHERE THE USURIOUS INTEREST HAS BEEN PAID, the amount cannot be offset or counterclaimed in an action on the note. The only remedy is by way of an independent action for the penalty. *Barnet v. National Bank*, 98 U. S. 555; *Caponigri v. Altieri*, 165 N. Y. 255, aff'g 29 App. Div. 304; *Carnegie Trust Co. v. Chapman*, 153 App. Div. 783; *Metropolitan Trust Co. v. Truax*, 67 Misc. 588; *Hessberg v. Matter*, 64 Misc. 97.

AMOUNT OF PENALTY.—Under the former law it was somewhat doubtful whether the penalty recoverable was twice the amount of the entire interest or merely twice the amount of the *excess*. In *Marine Bank v. Fiske*, 9 Hun 363, there is a dictum to the effect that only twice the amount of the *excess* is recoverable. This judgment was affirmed by the Court of Appeals (71 N. Y. 353). In *Hintermeister v. First Nat. Bank*, 64 N. Y. 212, the Court construed the National Banking Law as imposing a penalty of twice the amount of the *excess*, but the United States Supreme Court reversed the judgment (*First Nat. Bank v. Watt*, 184 U. S. 151), holding that twice the amount of the entire interest could be recovered. In the present law all doubt on this point has been removed by the insertion of the word "entire" before the word "amount."

CUMULATIVE PENALTIES are recoverable in a single action under this statute. *Mackey v. Royal Bank*, 75 Misc. 630.

Each violation of the section gives a separate cause of action. Several such causes of action may be joined in the Municipal Court. *Mackey v. Royal Bank*, 78 Misc. 145.

The party entitled to maintain the action for the penalty can recover twice the amount which he has paid for usury within two years prior to the commencement of the action, whether the amount has been paid in one or several payments. *Hintermeister v. First Nat. Bank*, 64 N. Y. 212.

WHAT IS A DISCOUNT.—The purchase of a note at less than its face is a discount. *Atlantic State Bank v. Savery*, 82 N. Y. 291.

DISCOUNT AS PAYMENT.—The deduction of a greater amount than the legal rate and the credit of the balance to the borrower constitutes a *payment* of usury. *Nash v. White's Bank*, 68 N. Y. 396.

DISCOUNT OF BUSINESS PAPER.—The provisions of the National Banking Act limiting the amount of interest to be taken by National banks on loans and discounts apply as well to discounts of business paper as of accommodation paper. *Johnson v. Nat. Bank*, 74 N. Y. 329.

WHAT NOT PAYMENT OF USURY.—The defense of usury in an action by a bank is not established by showing that in addition to the legal rate of interest paid to the bank, the borrower paid a certain sum to an officer of

the bank for obtaining the loan, it not appearing that he was acting for the bank in obtaining the loan or that the bank knew of the borrower's agreement to pay him for securing it. *Terminal Bank v. Dubroff*, 66 Misc. 100.

A charge for financing may or may not be legal dependent upon whether or not actual and valuable service was rendered upon which the charge is based; merely procuring money which was loaned to the company would not be permissible under section 114. *Attorney-General Rep.*, July 30, 1915.

§ 115. Interest on collateral demand loans of not less than five thousand dollars.

Upon advances of money repayable on demand to an amount not less than five thousand dollars made upon warehouse receipts, bills of lading, certificates of stock, certificates of deposit, bills of exchange, bonds or other negotiable instruments, pledged as collateral security for such repayment, any bank may receive or contract to receive and collect as compensation for making such advances any sum which may be agreed upon by the parties to such transaction.

Source.—Former § 75. The only change is the omission of the words "in writing" after the words "agreed upon."

CROSS-REFERENCES.—Application of section to individual bankers, see § 143.

Similar provision as to trust companies, see § 201.

Restrictions as to dividends of savings banks, see § 256.

SECTION SUPERSEDES GENERAL USURY LAWS.—*Hawley v. Kountze*, 6 App. Div. 217.

EFFECT OF ORAL AGREEMENT.—The only importance of an agreement in writing under the former law was to enable the lender to collect more than the legal rate of interest. The loan was not usurious, although there was no written agreement. *Hawley v. Kountze*, 6 App. Div. 217; *In re Wilde's Sons*, 133 Fed. 562, *aff'd* 144 Fed. 972.

USURY.—The retention of a fixed amount under the name of exchange, may constitute usury. *Perkins v. Smith*, 41 Hun 47; *aff'd* 116 N. Y. 449.

Statutes, state or national, upon the subject of banking, and usury, collated. *Perkins v. Smith*, 116 N. Y. 441.

In order to permit recovery for charging more than the legal rate of interest it is not necessary that the payment of interest be made in money. *Nash v. White's Bank of Buffalo*, 68 N. Y. 396.

The effect of the Banking Act, ch. 567 of 1880, was to repeal the penalties imposed by the amendment of ch. 163 of 1870 upon banks taking illegal interest. *Nash v. White's Bank of Buffalo*, 140 N. Y. 243.

A charge for financing may or may not be legal dependent upon whether or not actual and valuable service was rendered upon which the charge is based; merely procuring money which was loaned to the company would not be permissible under section 114. *Attorney-General Rep.*, July 30, 1915.

§ 116. Calculation of earnings for dividend period.

To determine the amount of gross earnings of a bank for any dividend period the following items may be included:

1. All earnings actually received during such period, less interest accrued and unpaid included in the last previous calculation of earnings;

2. Interest accrued and unpaid upon debts owing to it secured by collateral as authorized by this article upon which no default of more than one year exists and upon corporate stocks, bonds, or other interest-bearing obligations owned by it upon which no default exists;

3. The sums added to the cost of securities purchased for less than par as a result of amortization, provided the market value of such securities is at least equal to their present cost as determined by amortization;

4. Any profits actually received during such period from the sale of securities, real estate or other property owned by it;

5. Sums recovered on items previously charged off, and any amounts allowed by the superintendent on account of assets previously disallowed and charged off;

6. Provided the superintendent of banks shall have approved, and only to the extent of such approval, any increase in the book value of an office building owned by it, which building or a portion thereof is used by it as a place of business.

To determine the amount of net earnings for such dividend period the following items shall be deducted from gross earnings:

1. All expenses paid or incurred, both ordinary and extraordinary, in the transaction of its business, the collection of its debts, and the management of its affairs, less expenses incurred and interest accrued upon its debts deducted at the last previous calculation of net earnings for dividend purposes;

2. Interest paid or accrued and unpaid upon debts owing by it;

3. The amounts deducted through amortization from the cost of corporate stocks, bonds or other interest-bearing obligations purchased above par in order to bring them to par at maturity;

4. All losses sustained by it. In the computation of such losses all debts owing it shall be included upon which no interest shall have been paid for more than two years or on which a judgment has been recovered which shall have remained unsatisfied for two

years; and such other assets as shall have been disallowed by the superintendent of banks, or by its board of directors.

The balance thus obtained shall constitute the net earnings of such bank for such period.

Source.—Former § 28. The language is for the most part new.

CROSS-REFERENCES.—Definitions of “net earnings” and “dividend period,” see § 3.

Similar provision as to trust companies, see § 202.

RENEWAL NOTES.—Where a note held by a bank is taken up by giving a note of another person bearing a different endorsement, such transaction creates a new contract, and the indebtedness is not one that the bank must treat as a loss on the ground that it has remained due without prosecution and without payment of interest for more than one year. *Dykman v. Keeney*, 10 App. Div. 610.

An unmatured renewal note is not to be counted as a loss if taken in the ordinary course of business, although it includes the accrued interest on the previous note and the debt has been continued beyond a year. *Dykman v. Keeney*, 16 App. Div. 131, *aff'd* 160 N. Y. 677.

Where it appears that notes held by the bank are renewals which include the interest due on the previous notes, it is for the jury to say whether such renewal notes were taken in due course of business, and whether the amount of accrued interest included in the renewals represented loans such as would have been made apart from any prior relation of the parties, or were taken merely to cover defaulted debts. *Dykman v. Keeney*, 34 App. Div. 45.

§ 117. Surplus fund; of what composed, and for what purposes used.

Every bank shall create a fund to be known as a surplus fund. Such fund may be created or increased by contributions, by transfers from undivided profits, or from net earnings. Such fund up to twenty per centum of the capital of the bank shall be used only for the payment of losses in excess of undivided profits.

Source.—Former § 27, subd. 10.

CROSS-REFERENCES.—Definitions of “surplus fund,” “undivided profits” and “net earnings,” see § 3.

Similar provision as to trust companies, see § 203.

§ 118. How net earnings credited for dividend purposes; credits to surplus fund and to undivided profits; dividends to stockholders.

When the net earnings of a bank have been determined at the close of a dividend period as provided in section one hundred

sixteen of this article, if its surplus fund does not equal twenty per centum of the bank's capital, one-tenth of such net earnings shall be credited to the surplus fund or so much thereof, less than one-tenth, as will make such fund equal twenty per centum of such capital. The balance of such net earnings, or the entire amount thereof if such fund equals such twenty per centum, may be credited to the bank's profit and loss account; or, if its expenses and losses for such dividend period exceed its gross earnings, such excess shall be charged to its profit and loss account. The credit balance of such account shall constitute the undivided profits at the close of such dividend period, and shall be available for dividends.

The directors of any bank may annually, semi-annually or quarterly, but not more frequently, declare such dividends as they shall judge expedient from such undivided profits. No bank shall declare, credit or pay any dividend to its stockholders until it shall have made good any existing impairment of its capital and any existing encroachment on its reserves required to be maintained against deposits.

Source.—Former § 27, subd. 10. The prohibition against payment of dividends until any impairment of capital shall have been made good is taken from former § 29, and that against payment of dividends during the existence of an encroachment on reserves comes from former § 67.

CROSS-REFERENCES.—Definitions of "surplus fund," "undivided profits," "net earnings" and "dividend period," see § 3.

Similar provision as to trust companies, see § 204.

Directors' liability for declaring unauthorized dividends, see *Stock Corp. Law*, § 28, post.

Criminal liability for paying dividends out of capital, see *Penal Law*, § 664, post.

STOCK DIVIDEND.—A state bank which has increased its capital stock may declare a stock dividend, subject to the limitations contained in the provisions as to dividends and surplus. *Op. Atty.-Gen.*, April 16, 1914.

CAUSE OF ACTION AGAINST DIRECTORS BELONGS TO CREDITORS.—The cause of action against directors for improperly declaring a dividend while the bank was insolvent belongs to the creditors, and the receiver cannot enforce it for the benefit of the stockholders. *Butterworth v. O'Brien*, 39 Barb. 192.

§ 119. Change of location.

Any bank may make a written application to the superintendent of banks for leave to change its place of business to another place in the same county. The application shall state the reasons for such proposed change, and shall be signed and acknowledged by a majority of its board of directors and accompanied by the writ-

ten assent thereto of stockholders owning at least two-thirds in amount of its stock. If the proposed place of business is within the limits of the village, borough or city if in a city not divided into boroughs, in which the principal place of business of the bank is located, such change may be made upon the written approval of the superintendent; if beyond such limits, notice of intention to make such application, signed by the president and cashier of the bank shall be published once a week for two successive weeks immediately preceding such application in a newspaper published in the city of Albany in which notices by state officers are required by law to be published, and in a newspaper to be designated by the superintendent, published in the county in which the place of business of such bank is located. If the superintendent shall grant his certificate authorizing the change of location, as provided in section fifty of this chapter, the bank shall cause such certificate to be published once in each week for two successive weeks in the newspapers in which the notice of application was published. When the requirements of this section shall have been fully complied with, the bank may, upon or after the day specified in the certificate, remove its property and effects to the location designated therein, and thereafter its principal place of business shall be the location so specified; and it shall have all the rights and powers in such new location which it possessed at its former location.

Source.—Former § 31.—The old law provided for a change to another place “in the same or another county.” The language of the old law, “and thereafter its sole business location shall be the location so specified” has been changed to “thereafter its principal place of business shall be the location so specified.” The Attorney-General was of the opinion that the use of the phrase “sole business location” constituted a prohibition against branch offices. Atty.-Gen. Rep. (1900) 248, 255.

CROSS-REFERENCES.—Powers and duties of superintendent in regard to change of location, see § 50.

Similar provision as to private bankers, see § 159; as to trust companies, see § 205; as to savings banks, see § 250; as to investment companies, see § 296; as to safe deposit companies, see § 321. as to personal loan companies, see § 352; as to savings and loan associations, see § 403; as to credit unions, see § 460.

APPLICATION SAME IN EITHER CASE.—Whether the change of location is within the limits of the same city or town or outside such limits, the application must state the reasons for the proposed change, be signed by the

majority of the board of directors, and be accompanied by the written assent of two-thirds of the stockholders. Atty.-Gen. Rep. (1909) 710.

§ 120. Rights and liabilities of stockholders; who liable as stockholders; who may enforce liability; within what time action must be commenced.

The rights, powers and duties of stockholders of banks shall be as prescribed in the general corporation law and the stock corporation law; but the individual liability of such stockholders for the contracts, debts, and engagements of the bank and the time within which an action may be instituted to enforce such liability shall be governed exclusively by the provisions of this section and section eighty of this chapter.

The stockholders of every bank shall be individually responsible, equally and ratably and not one for another, for all contracts, debts and engagements of the bank, to the extent of the amount of their stock therein, at the par value thereof, in addition to the amount invested in such shares. An action to enforce such liability must be brought within six years after the cause of action has accrued. The term "stockholder" as used in this section shall apply to:

1. Such persons as appear by the books of the bank to be stockholders;

2. Every owner of stock, legal or equitable, although the same may be on such books in the name of another person, provided, however, that such term shall not apply to a person holding stock as collateral security for the payment of a debt and not appearing by the books of the bank to be the owner and holder thereof in his own right, or to a person holding stock in a bona fide fiduciary capacity and not appearing by the books of the bank to be the owner and holder thereof in his own right unless such fiduciary shall have invested the funds in his care in violation of law or of the terms under which said funds are held by him, in which case he shall be personally liable as a stockholder.

No person who has in good faith, and without any intent to evade his liability as a stockholder, caused his stock to be transferred on the books of the bank when such bank is solvent to any resident of this state of full age previous to any default in the payment of any debt or liability of the bank, shall be subject to any

personal liability for any contracts, debts or engagements of the bank.

In case the superintendent of banks shall have taken possession of the property and business of the bank pursuant to section fifty-seven of this chapter or a permanent receiver of such bank shall have been appointed, all actions or proceedings to enforce the liability of stockholders under this section shall be taken and prosecuted only in the name of the superintendent or the receiver, as the case may be, unless the superintendent or receiver shall refuse to take such action or proceeding upon proper request in writing made by any creditor, or shall have failed or neglected to commence such action or proceeding within sixty days after the receipt of such request, and in that event such action or proceeding may be taken by any creditor of the bank. But no such action shall be brought by a creditor until a judgment shall have been recovered by him against the bank and an execution thereon shall have been returned unsatisfied in whole or in part.

Source.—The first paragraph is new. The first sentence of the second paragraph comes from former § 71. The six-year limitation is new. The definition of "stockholder" comes from former § 2, except the part relating to persons holding in a fiduciary capacity, which comes from Stock Corp. Law, § 58. The paragraph providing for transfer on the books of the bank is taken from former § 72. The last paragraph comes from former § 71, except the last sentence which is derived from Stock Corp. Law, § 59.

CROSS-REFERENCES.—Enforcement of stockholders' liability by superintendent, see § 80.

Similar provision as to trust companies, see § 206; of safe deposit companies, see § 322.

Actions to enforce liability, see Gen. Corp. Law, §§ 100-115.

Actions to dissolve corporations, see Gen. Corp. Law, §§ 150-161.

CONSTITUTIONAL PROVISION.—Art. VIII, § 7, provides that stockholders of banks shall be liable for all its debts to the amount of their respective shares. The provision first appeared in the Constitution of 1846, being then applicable to banks of issue only. It was extended to banks not of issue by the Constitution of 1894.

For a discussion of the reasons for applying the constitutional provisions to banks not of issue, see *Barnes v. Arnold*, 23 Misc. 197, 205.

Art. VIII, § 7, of the Constitution of 1846 held to apply to banks then existing as well as those thereafter organized. *Matter of Lee's Bank*, 21 N. Y. 9.

The constitutional provision applies to specially chartered banks. *Matter of Reciprocity Bank*, 22 N. Y. 9.

CONSTITUTIONALITY OF SECTION.—The courts have repeatedly upheld the constitutionality of former § 71, part of which is now in this section. *Van Tuyl v. Robin*, 80 Misc. 330, aff'd 160 App. Div. 41 and 211 N. Y. 540; *Barnes v. Arnold*, 169 N. Y. 611, aff'g 45 App. Div. 314; *Persons v. Gardner*, 42 App. Div. 490; *Matter of Lee's Bank*, 21 N. Y. 9; *Matter of Empire City Bank*, 18 N. Y. 199; *Matter of Reciprocity Bank*, 22 N. Y. 9; *Diven v. Duncan*, 41 Barb. 520.

SECTION TO BE STRICTLY CONSTRUED.—*Chase v. Lord*, 77 N. Y. 1; *Barnes v. Arnold*, 23 Misc. 197, aff'd 45 App. Div. 314, 169 N. Y. 611.

APPLICATION OF STOCK CORPORATION LAW.—This section now provides that the liability of stockholders of banks shall be governed exclusively by the Banking Law. Under former § 71 there was great difficulty in determining how far the provisions of §§ 58, 59 of the Stock Corporation Law applied. See *Van Tuyl v. Robin*, 80 Misc. 360, aff'd 160 App. Div. 41 and 211 N. Y. 540; *Van Tuyl v. Scharmann*, 208 N. Y. 53; *Hirshfeld v. Bopp*, 145 N. Y. 84; *Mosler Safe Co. v. Guardian Trust Co.*, 208 N. Y. 524; *Assets Realization Co. v. Howard*, 70 Misc. 651, affirmed 152 App. Div. 900 and 211 N. Y. 430; *Smith v. Quayle*, 86 Misc. 259.

In *Richards v. Robin* (*Law Journal*, March 27, 1915) it was held that § 59 of the Stock Corporation Law did not apply.

NATURE OF LIABILITY.—The liability of a bank stockholder is several, and is not affected by the failure of any other stockholder to pay the amount assessed against him. *Mosler Safe Co. v. Guardian Trust Co.*, 208 N. Y. 524, aff'g 153 App. Div. 117; *Terry v. Little*, 101 U. S. 216; *U. S. v. Knox*, 102 U. S. 422.

LIABLE DIRECTLY TO CREDITORS.—The liability of stockholders is directly to creditors and not one to supply a deficiency in capital, but is in addition thereto. *Mosler Safe Co. v. Guardian Trust Co.*, 208 N. Y. 524, aff'g 153 App. Div. 117.

FOR WHAT DEBTS LIABLE.—Deposits in the ordinary course of business, or upon certificates of deposit made by their terms payable upon the return thereof, are obligations for which the stockholders are liable under this section. *Barnes v. Arnold*, 169 N. Y. 611, aff'g 45 App. Div. 314.

The stockholders are not liable for *ultra vires* obligations of the bank. Thus, an indebtedness arising out of a contract made by the directors for the voluntary liquidation of the bank is not one for which the stockholders can be held liable. *Assets Realization Co. v. Howard*, 70 Misc. 651, affirmed 152 App. Div. 900 and 211 N. Y. 430.

INTEREST ON LIABILITY.—In *Mahoney v. Bernhard*, 45 App. Div. 499, affirmed 160 N. Y. 589, it was held that the liability could not be extended by allowing interest thereon. But express provision is now made by § 80 for interest where the liability is enforced by the Superintendent of Banks.

APPLIES TO EXISTING STOCKHOLDERS.—This section applies to stockholders who became such prior to its enactment. *Barnes v. Arnold*, 169 N. Y. 611, aff'g 45 App. Div. 314.

WHEN STOCKHOLDERS OF RECORD NOT LIABLE.—Although a person appears as a stockholder on the books of the corporation, if he was made such

without his knowledge or consent, he cannot be held liable. *Richard v. Robin* (Law Journal, March 27, 1915).

TRANSFER ON BOOKS NECESSARY TO TERMINATE LIABILITY—A stockholder of record who has assigned his stock but failed to have it transferred on the books of the bank is liable. *Van Tuyl v. Robin*, 80 Misc. 360, aff'd 160 App. Div. 41 and 211 N. Y. 540; *Wheeler v. Werner*, 140 App. Div. 695; *Shellington v. Howland*, 53 N. Y. 371.

But if the stockholder has used all due diligence and employed all reasonable business prudence to obtain a transfer on the books, he cannot be held liable although such transfer has never been made. (*Richards v. Robin* (Law Journal, March 27, 1915)).

BOTH ASSIGNOR AND ASSIGNEE LIABLE.—An assignment without a transfer on the books renders the assignee liable, but the assignor also remains liable. *Wheeler v. Werner*, 140 App. Div. 695; *Richards v. Robin* (Law Journal, March 27, 1915).

An unregistered transferee from an executor of bank stock standing on the books in the name of the decedent is liable as a stockholder. *Mahoney v. Bernhard*, 45 App. Div. 499, aff'd 160 589.

BROKERS NOT LIABLE AS ASSIGNEES.—Where defendants who appeared as stockholders of record alleged in their answers that they had sold their stock to certain brokers who were joined as defendants, and the latter alleged in their answers that they purchased merely as brokers for other persons, which was admitted by the plaintiff, it was held that the broker defendants were not entitled to judgment on the pleadings. *Richards v. Robin*, 86 Misc. 528.

But on the trial of the action it was held that the monetary ownership of the brokers, under such circumstances, did not constitute them transferors within the rule making the transferee liable over to the transferor. *Richards v. Robin* (Law Journal, March 27, 1915).

TRANSFER WHILE BANK INSOLVENT.—A stockholder who transfers his shares when the bank is insolvent remains liable whether or not he acted in good faith and without knowledge of the insolvency. *Persons v. Gardner*, 113 App. Div. 597.

A TRANSFER TO THE BANK ITSELF does not satisfy the requirements of this section. *Matter of Reciprocity Bank*, 22 N. Y. 9.

PLEDGES.—Under the present section a pledgee of bank stock who appears by the books of the bank to be the unqualified owner and holder of the stock is undoubtedly liable as a stockholder. Under the former law there was some doubt on this point, but the Court of Appeals, held that such a pledgee must be deemed a "stockholder." *Van Tuyl v. Robin*, 211 N. Y. 540, aff'g 160 App. Div. 41, which reversed 80 Misc. 360, on this point. See also *Matter of Empire City Bank*, 18 N. Y. 199, 224; *Adderly v. Storm*, 6 Hill 624.

EXECUTORS.—Executors of a person who appears as a stockholder on the books of the bank are chargeable, in their representative capacity, as stockholders. *Diven v. Duncan*, 41 Barb. 520; *Richards v. Robin* (Law Journal, March 27, 1915).

Executors of a decedent, joined as defendants because of stock standing in their decedent's name, remain liable as such after the settlement of their accounts by the Surrogate. *Mahoney v. Bernhard*, 45 App. Div. 499, aff'd 169 N. Y. 589.

Where a defendant in a stockholder's action dies and his executor is substituted, a judgment recovered against the decedent does not bind his devisee. Upon the rendition of such judgment and the return of an execution unsatisfied, a cause of action arises against the devisee enforceable within ten years thereafter upon proof of all the facts upon which the judgment against the decedent's estate was rendered. *Richards v. Gill*, 138 App. Div. 76.

When executors, without authority from the testator and without authority of law, invest funds of the estate in bank stock, they and not the estate are responsible as stockholders. *Diven v. Lee*, 36 N. Y. 302.

ENFORCEMENT BY RECEIVER.—The provision as to enforcement of the liability by a receiver was incorporated into the section by chapter 441 of the Laws of 1897. This amendment was held to apply to a bank which prior to its enactment had been dissolved and of which a permanent receiver had been appointed. *Persons v. Gardner*, 42 App. Div. 490, aff'd 26 Misc. 663.

The amendment of 1897 was held not to apply to an action begun before its passage, even as to defendants who had not then been served with process. *Mahoney v. Bernhard*, 45 App. Div. 499, aff'd 169 N. Y. 589.

This section does not put on the permanent receiver an absolute duty to proceed against stockholders, and a receiver's account should not be surcharged with the amount which he might have recovered had he proceeded against a solvent stockholder within the time limited by statute. *People v. Staten Island Bank*, 146 App. Div. 378.

In an action by a permanent receiver the plaintiff must make out at least a prima facie case that there is valid and subsisting indebtedness remaining unpaid, and that in order to discharge it a contribution from the stockholders is necessary. *Smith v. Quayle*, 86 Misc. 259.

ENFORCEMENT BY CREDITOR.—Prior to the amendment of 1897 (Laws 1897, ch. 441) an action could only be brought by creditors. *Persons v. Gardner* 26 Misc. 663, aff'd 42 App. Div. 490.

Previous to that amendment it was held that a creditor could maintain an action in equity, in behalf of himself and all others similarly situated, to enforce the stockholders' liability. *Pfohl v. Simpson*, 50 How. Pr. 341.

Where the action is brought by a creditor, the recovery of judgment against the bank is a condition precedent and must be alleged in the complaint. *Hirshfeld v. Bopp*, 145 N. Y. 84; *Hirshfeld v. Kursheedt*, 81 Hun, 555.

A judgment against the bank does not establish, as against the stockholders, that the debt on which it is based is one for which the stockholders can be held liable. *Assets Realization Co. v. Howard*, 70 Misc. 651, aff'd 152 App. Div. 900 and 211 N. Y. 430.

Complaint in action by creditor held sufficient. *Hagmayer v. Farley*, 23 App. Div. 426.

Where the action is brought by a creditor on behalf of himself and all other creditors, the plaintiff does not become a trustee for the other creditors to the extent that he must carry on the litigation for their interests in opposition to his own, or after he has settled his claim. Until another creditor has procured an order making him a party, or until an interlocutory judgment has been rendered, he has entire control of the action. If in such case the plaintiff discontinues action, the receivers of the bank are not entitled to continue it. *Hirshfeld v. Fitzgerald*, 157 N. Y. 166.

After the above decision in *Hirshfeld v. Fitzgerald*, certain creditors of the Harlem River Bank, moved to be joined in a creditors' action against the stockholders of that bank which had been pending for more than three years and was at issue as to all the answering defendants, but had not been noticed for trial. It was held that, under the circumstances, the motion was not made too late and should be granted. *Hagmayer v. Alten*, 41 App. Div. 487.

Where after the appointment of a receiver in an action for the dissolution of an insolvent bank, a creditors' action is brought and judgment recovered against the stockholders, a creditor who did not join in the creditors' action may entitle himself to share in the distribution by paying his share of the expense of the action and presenting a satisfactory excuse for not proving his claim within the prescribed period. *Matter of Ziegler*, 98 App. Div. 117.

FORM OF ACTION.—Under the former law the only permissible form of action was one in equity against all the stockholders. *Cheney v. Scharmann*, 145 App. Div. 456; *Hirshfeld v. Bopp*, 145 N. Y. 84.

Under the present law (§ 80) the superintendent is given power to sue the stockholders either separately or jointly.

EXHAUSTION OF ASSETS NOT ESSENTIAL.—That not all the assets of the insolvent bank have been exhausted does not constitute a defense to an action to enforce the stockholders' liability. *Barnes v. Arnold*, 23 Misc. 201; *Persons v. Gardner*, 26 Misc. 663, aff'd 42 App. Div. 490; *Van Tuyl v. Robin*, 80 Misc. 360, aff'd 160 App. Div. 41; *Richards v. Robin* (Law Journal, March 27, 1915).

SET-OFF.—A stockholder cannot set off a claim against the bank in an action to enforce his liability. *Matter of Empire City Bank*, 18 N. Y. 199; *Van Tuyl v. Schwab*, 165 App. Div. 412.

But where the superintendent makes an assessment upon stockholders to enable the corporation to resume business, if business is not resumed and the fund raised by the assessment is distributed ratably among the creditors, stockholders who have paid the assessment are entitled in equity to set off the amount against their statutory liability. *Mosler Safe Co. v. Guardian Trust Co.*, 208 N. Y. 524, aff'g 153 App. Div. 117.

STOCKHOLDERS PAID LAST.—Nothing is to be repaid to stockholders until after payment in full of all the debts of the bank. *Hollister v. Hollister Bank*, 2 Abb. Dec. 367; *Pruyn v. Van Allen*, 39 Barb. 354.

§ 121. Assessment of stockholders to make good impairment of capital; sale of stock.

Whenever the superintendent of banks shall have made requisition upon any bank pursuant to section fifty-six of this chapter to make good the amount of an impairment of its capital, the directors of the bank shall immediately give notice of such requisition to each stockholder and of the amount of the assessment which he must pay for the purpose of making good such deficiency, by a written or printed notice mailed to such stockholder at his place of residence, or served personally upon him. If any stockholder shall refuse or neglect to pay the assessment specified in such notice

within sixty days from the date thereof, the directors of such bank shall have the right to sell to the highest bidder at public auction the stock of such stockholder, after giving previous notice of such sale for two weeks in a newspaper of general circulation published in the county where the principal office of such bank is located; or such stock may be sold at private sale, and without such published notice, provided, however, that before making a private sale thereof an offer in writing to purchase such stock shall first be obtained, and a copy thereof served upon the owner of record of the stock sought to be sold either personally or by mailing a copy of such offer to such owner at his place of residence or the address furnished by him to the bank; and if, after service of such offer, such owner shall still refuse or neglect to pay such assessment within two weeks from the time of service of such offer the said directors may accept such offer and sell such stock to the person or persons making such offer, or to any other person or persons making a larger offer than the amount named in the offer submitted to such stockholder; but said stock shall in no event be sold for a smaller sum than the valuation put on it by the superintendent in his determination and certificate, which valuation shall not be less than the amount of the assessment called for and the necessary costs of sale. Out of the avails of the stock sold the directors shall pay the necessary costs of sale and the amount of the assessment called for thereon. The balance, if any, shall be paid to the person or persons whose stock has been thus sold. A sale of stock as herein provided shall effect an absolute cancellation of the outstanding certificate or certificates evidencing the stock so sold, and shall render the same null and void and a new certificate or certificates shall be issued to the purchaser or purchasers of said stock.

Source.—Former § 17.

CROSS-REFERENCES.—Order of superintendent requiring impairment of capital to be made good, see § 56.

Similar provision as to trust companies, see § 207; as to safe deposit companies, see § 323.

PURPOSE OF ASSESSMENT.—The assessment provided for in this section is for the purpose of enabling the corporation to resume business. Such assessment can doubtless be made, even though the superintendent has taken possession, but it cannot be made for the purpose of swelling the assets to be distributed on a liquidation. *Mosler Safe Co. v. Guardian Trust Co.*, 153 App. Div. 117, 126, modified 208 N. Y. 524.

This section does not apply to the case of a bank which has suspended payments and closed its doors. *Attorney-Gen. Rep.* (1908) 379.

FOR WHAT AMOUNT STOCK TO BE SOLD.—Under this section, in its present form, it is contemplated that the stock may be sold for the amount of the assessment plus the cost of the sale. *Atty.-Gen. Rep.* (1910) 854.

But prior to the amendment of 1905, the purchaser was deemed to be entitled to receive the new certificate only upon paying the amount of his bid and also the par value of the stock, less the value thereof as fixed by the superintendent. *Atty.-Gen. Rep. (1903) 266.*

"THE VALUATION PUT ON IT BY THE SUPERINTENDENT."—Opinion that the "valuation" to be put on the stock is such amount as in the good judgment of the superintendent represents its actual value at the time he makes his certificate. *Atty.-Gen. Rep. (1901) 158.*

SALE ANNULS CERTIFICATE.—The sale of a stockholder's shares under this section operates to annul his certificate whether or not it is surrendered by him. *Atty.-Gen. Rep. (1900) 228.*

§ 122. Annual meeting of stockholders; notice.

The stockholders of every bank shall hold an annual meeting for the election of directors on the second Tuesday in January or within ten days thereafter. Notice of such meeting shall be given as required by the stock corporation law.

Source.—Former § 69.

CROSS-REFERENCES.—Similar provision as to trust companies, see § 209; as to safe deposit companies, see § 324; as to personal loan companies, see § 353.

General provisions regarding election of corporate directors, see *Gen. Corp. Law*, §§ 23–32, *post*.

General provisions regarding directors of stock corporations, see *Stock Corp. Law*, §§ 25–35, *post*.

Misconduct of directors, see *Penal Law*, §§ 290, 297, 664, 665, 668, *post*.

AN ADJOURNMENT OF AN ANNUAL MEETING for the election of directors cannot be taken to a day later than ten days after the second Tuesday in January. *Atty.-Gen. Rep. (1909) 739.*

FAILURE TO PUBLISH NOTICE; WAIVER.—Where the requirement of publication of notice was disregarded, but the notice was served on all the stockholders either personally or by mail, and the meeting and election were in every other respect regular, the Attorney-General was of the opinion that the election should be rendered valid and legal by a waiver signed by each stockholder, as provided in § 42 of the *Gen. Corp. Law*. *Atty.-Gen. Rep. (1910) 823.*

DIRECTOR CANNOT ACT AS PROXY.—*Gen. Corp. Law*, § 26, which forbids officers of corporations formed under the *Banking Law* to serve as proxies for stockholders, applies to directors. *Atty.-Gen. Rep. (1912) vol. 2, p. 285.*

§ 123. Qualifications and disqualifications of directors.

Each director must be a citizen of the United States, and at least three-fourths of the directors must be residents of this state at the time of their election and during their continuance in office. If at a time when not more than three-fourths of the directors are residents of this state, any director shall cease to be a resident of this state, he shall forthwith cease to be a director of the bank and his office shall be vacant. Every director of a bank having a capital of fifty thousand dollars or over shall be a stockholder of the bank owning in his own right an amount equal to at least one

thousand dollars in value, and of a bank having a capital of less than fifty thousand dollars, a stockholder in his own right in an amount equal to at least five hundred dollars in value; and every person elected to be a director who, after such election, shall hypothecate, pledge or cease to be the owner in his own right of the amount of stock aforesaid, shall cease to be a director of the bank and his office shall be vacant, and he shall not be eligible for re-election as a director for a period of one year from the date of the next succeeding annual meeting.

Source.—Former § 69. The provisions as to vacating the office by removal from the state and as to the ineligibility for re-election of a director who has parted with his qualifying stock are new.

CROSS-REFERENCES.—Similar provisions as to trust companies, see § 210; as to savings banks, see §§ 260, 268; as to safe deposit companies, see § 325; as to personal loan companies, see § 354; as to savings and loan associations, see § 405; as to land bank, see § 430; as to credit unions, see § 465.

HYPOTHECATION OF QUALIFYING STOCK.—The law intends that the director shall be the owner of unincumbered stock to the amount specified. If the stock is hypothecated the office is to be deemed vacant. *Atty.-Gen. Rep. (1896) 203.*

VICE-PRESIDENT MUST BE DIRECTOR.—*Stock Corp. Law, § 30*, provides that the president must be a director. There is no such requirement as to other officers, but since the vice-president succeeds to the president's duties, it is considered that at least one vice-president should be a director. (*See White on Corporations, 7th ed., p. 261.*) The Attorney-General was of the opinion that, in consequence, an alien could not be elected vice-president, as *Banking Law, former § 69*, provided that "each director must be a citizen of the United States." *Atty.-Gen. Rep. (1909) 737.*

§ 124. Oath of directors.

Each director, when appointed or elected, shall take an oath that he will, so far as the duty devolves on him, diligently and honestly administer the affairs of the bank, and will not knowingly violate, or willingly permit to be violated, any of the provisions of law applicable to such bank, and that he is the owner in good faith and in his own right, of shares of stock of the value required by this article, subscribed by him or standing in his name on the books of the bank and that the same is not hypothecated, or in any way pledged as security for any loan or debt, and, in case of re-election or reappointment, that such stock was not hypothecated, or in any way pledged as security for any loan or debt

during his previous term. Such oath shall be subscribed by the director making it, and certified by an officer authorized by law to administer oaths, and immediately transmitted to the superintendent of banks.

Source.—Former § 70.

CROSS-REFERENCES.—Similar provision as to trust companies, see § 211; as to savings banks, see § 261; as to safe deposit companies, see § 326; as to personal loan companies, see § 355, as to savings and loan associations, see § 406; as to land bank, see § 431; as to credit unions, see § 466.

SECTION DOES NOT IMPOSE DUTIES.—This section does not amount to a statutory requirement that the directors shall diligently and honestly administer the affairs of the bank, so as to authorize an indictment under Penal Law, § 297, which provides that a director shall be guilty of a misdemeanor if he “wholly omits to perform any duty imposed upon him as such director by law.” *People v. Knapp*, 206 N. Y. 373, aff’d 147 App. Div. 436.

LIABILITY OF DIRECTORS.—These questions are governed by common law principles and by the provisions of the General Corporation Law and the Stock Corporation Law. As to liability of bank directors for negligence, see *O’Brien v. Kursheedt*, 79 Hun 615.

As to liability for receiving deposits when bank is insolvent, see *Cassidy v. Uhlman*, 27 App. Div. 80, rev’d 163 N. Y. 380; *Same v. Same*, 54 App. Div. 205, aff’d 170 N. Y. 505

§ 125. Tenure of office of directors.

The directors shall, unless sooner removed or disqualified, hold office until the next annual meeting of stockholders, and until their successors are elected and have qualified.

Source.—Former § 69.

CROSS-REFERENCES.—Similar provisions as to trust companies, see § 208; as to safe deposit companies, see § 327; as to personal loan companies, see § 356; as to credit unions, see § 467.

§ 126. Vacancies in board of directors.

All vacancies in the office of director shall be filled by election by the stockholders except as hereinafter provided. Vacancies not exceeding one-third of the whole number of the board may be filled by the affirmative vote of a majority of the directors then in office, and the directors so elected may hold office until such vacancies are filled by the stockholders at a special or annual meeting; or when the number of directors required is nine or more, two vacancies may, with the consent of the superintendent, be left

unfilled until the next annual election, and when the number of directors required is more than five and less than nine, one vacancy may, with the superintendent's consent, be left unfilled until the next annual election.

Source.—Former § 69. The provision for leaving vacancies unfilled until the next annual election is new.

CROSS-REFERENCES.—Similar provision as to trust companies, see § 212; as to savings banks, see § 269; as to savings and loan associations, see § 407; as to land bank, see § 432.

§ 127. Change of number of directors.

The stockholders at any annual meeting, provided notice of the proposed change be given in the notice of such meeting, may, by a majority of all the votes of the stockholders of such bank, change by resolution the number of its directors to such number not less than five as they may decide, but such change shall not become effective until approved by the superintendent; or such bank may change the number of its directors in the manner prescribed in section twenty-six of the stock corporation law. A certified copy of every resolution changing the number of directors at an annual meeting shall be immediately filed in the office of the superintendent together with proof by affidavit of the publication of said notice of the annual meeting.

Source.—Former § 69.

CROSS-REFERENCES.—Similar provision as to savings banks, see § 269; as to savings and loan associations, see § 408; as to land bank, see § 433.

§ 128. Annual meeting of directors; election of officers.

Within fifteen days after the date on which the annual meeting of stockholders is held the directors elected at such meeting shall, after their due qualification, hold a meeting at which they shall elect a president from their own number, a vice-president, and such other officers as are required by the by-laws to be elected annually.

Source.—New.

CROSS REFERENCES.—Similar provision as to trust companies, see § 213.

§ 129. Monthly meetings of directors; quorum; statement to directors.

The directors of every bank shall hold a regular meeting at least once in each month. If the number of directors necessary to constitute a quorum is not prescribed in the certificate of incorporation or organization certificate, or in the by-laws, and no provision is made therein for determining the same, the directors may fix such number, which shall not be less than five, with the same effect as if such number were prescribed in the certificate of incorporation or organization certificate. The board of directors shall, by resolution duly recorded in the minutes, designate an officer or officers whose duty it shall be to prepare and submit to each director at each regular meeting of the board, or to an executive committee of not less than five members of such board, a written statement of all the purchases and sales of securities, and of every discount, loan or other advance, including over-drafts and renewals made since the last regular meeting of the board, describing the collateral to such indebtedness as of the date of meeting at which such statement is submitted; but such officer or officers may omit from such statement discounts, loans or advances including over-drafts and renewals of less than one thousand dollars except as hereinafter provided. Such statement shall also contain a list giving the aggregate of loans, discounts and advances including over-drafts to each individual partnership, unincorporated association, corporation or person whose liability to the bank has been increased one thousand dollars or more since the last regular meeting of the board, together with a description of the collateral to such indebtedness held by the bank at the date of the meeting at which such statement is submitted. A copy of such statement, together with a list of the directors present at such meeting, verified by the affidavit of the officer or officers charged with the duty of preparing and submitting such statement shall be filed with the records of the bank within one day after such meeting, and be presumptive evidence of the matters therein stated.

Source.—Former § 42, except the second sentence which is from former § 69. Renewals are included for the first time.

CROSS-REFERENCES.—Similar provision as to trust companies, see § 214; as to savings banks, see § 264; as to personal loan associations, see § 357.

"SUBMIT TO EACH DIRECTOR."—Opinion that separate copies of the financial statement need not be presented to each director or member of the executive committee. It is sufficient if the same copy be submitted to each of them. Atty.-Gen. Rep. (1909) 715.

DIRECTORS NOT ON EXECUTIVE COMMITTEE.—The necessary inference from this section is that directors who are not upon the executive committee are not chargeable with knowledge of detail management, where there is an executive committee. *Kavanaugh v. Gould*, 147 App. Div. 281.

§ 130. Examinations by directors into affairs of banks; may employ assistants.

It shall be the duty of the board of directors of every bank during the months of March or April and during the months of September or October in each year to examine, or to cause a committee of at least three of its members to examine, fully the books, papers and affairs of the bank, and the loans and discounts thereof, and particularly the loans or discounts made directly or indirectly to its officers or directors, or for the benefit of such officers or directors, or for the benefit of other corporations of which such officers or directors are also officers or directors, or in which they have a beneficial interest as stockholders, creditors, or otherwise, with the special view of ascertaining their safety and present value, and the value of the collateral security, if any, held in connection therewith, and into such other matters as the superintendent of banks may require. Such directors shall have the power to employ such assistance in making such examination as they may deem necessary.

Source.—Former § 23. "April and October" in former law has been changed to "March or April" and "September or October."

CROSS-REFERENCES. Similar provision as to trust companies, see § 215.

§ 131. Reports of directors' examinations; penalty for failure to make or file.

On or before the fifteenth day of the month of May or November succeeding any examination made pursuant to the requirements of the last section, a report in writing thereof, sworn to by the directors making the same, shall be made to the board of directors of such bank, and placed on file in said bank, and a duplicate thereof filed in the office of the superintendent of banks. Such report shall particularly contain a statement of the assets

and liabilities of the bank examined, as shown by the books, together with such deductions from the assets, and the addition of such liabilities, direct, indirect, contingent or otherwise as such directors or committee, after such examination, may find necessary in order to determine the true condition of the bank. It shall also contain a statement showing in detail every known liability to such bank, direct, indirect, contingent, or otherwise, of every officer or director thereof and of every corporation in which any such officer or director owns stock to the amount of twenty-five per centum of the total outstanding stock, or of which any such officer or director is also an officer or director. It shall also contain a statement, in detail, of loans, if any, which in their opinion are doubtful or worthless, together with their reasons for so regarding them; also a statement of loans made on collateral security which in their opinion are insufficiently secured, giving in each case the amount of the loan, the name and market value of the collateral, if it has any market value, and, if not, a statement of that fact, and its actual value as nearly as possible. Such report shall also contain a statement of overdrafts, of the names and amounts of such as they consider worthless or doubtful, and a full statement of such other matters as affect the solvency and soundness of the institution. If the directors of any bank shall fail to make, or to cause to be made, or to file such report of examination in the manner, and within the time, specified, such bank shall forfeit to the people of the state one hundred dollars for every day such report shall be delayed.

Source.—Former § 23.

CROSS-REFERENCES.—Similar provision as to trust companies, see § 216.

HOW LOSSES TO BE ENTERED.—The authorization to the directors to make such deductions from the assets or additions to the liabilities as conditions may warrant, contemplates the charging off or marking down of bad loans or securities, the value of which had been impaired, and does not give the directors authority to establish a "Guarantee Fund" to take care of such losses. Atty.-Gen. Rep. (1908) 400.

§ 132. Communications from banking department must be submitted to directors and noted in minutes.

Each official communication directed by the superintendent of banks or one of his deputies to a bank or to any officer thereof,

relating to an examination or investigation conducted by the banking department or containing suggestions or recommendations as to the conduct of the business of the bank, shall be submitted, by the officer receiving it, to the board of directors at the next meeting of such board, and duly noted in the minutes of the meetings of such board.

Source.—Former § 41. The provision for noting in the minutes of the board is new.

CROSS-REFERENCES.—For similar provision as to trust companies, see § 217; as to savings banks, see § 276; as to investment companies, see § 297; as to safe deposit companies, see § 328; as to personal loan companies, see § 358; as to savings and loan associations, see § 412; as to credit unions, see § 476.

§ 133. Reports to superintendent; penalty for failure to make.

Within ten days after service upon it of the notice provided for by section forty-two of this chapter, every bank shall make a written report to the superintendent, which report shall be in the form and shall contain the matters prescribed by the superintendent and shall specifically state the items of capital, deposits, specie and cash items, public securities and private securities, real estate and real estate securities, and such other items as may be necessary to inform the public as to the financial condition and solvency of the bank, or which the superintendent may deem proper to include therein, and shall also state the amount of deposits the payment of which, in case of insolvency, is preferred by law or otherwise over other deposits. Every such report shall be verified by the oaths of the president or vice-president and cashier, or assistant cashier, and such verification shall state that the report is true and correct in all respects to the best of the knowledge and belief of the persons verifying it, and that the usual business of the bank has been transacted at the location required by this article and not elsewhere. Every such report, exclusive of the verification, shall within thirty days after it shall have been filed with the superintendent, be published by the bank in one newspaper of the place where its principal place of business is located, or if no newspaper is published there, in the newspaper published nearest to such place.

Every such bank shall also make such other special reports to the superintendent as he may from time to time require, in such form and at such date as may be prescribed by him and such report shall, if required by him, be verified in such manner as he may prescribe.

Every such bank, which does not have an unimpaired surplus fund equal to at least twenty per centum of its capital shall, within ten days after declaring a dividend, make a written report to the superintendent stating the amount of such dividend, the amount of its net earnings in excess thereof and the amount carried to the surplus fund. Such report shall be verified by the oath of the president or vice-president and cashier, or assistant cashier of the bank.

If any such bank shall fail to make any report required by this section on or before the day designated for the making thereof, or shall fail to include therein any matter required by the superintendent, such bank shall forfeit to the people of the state the sum of one hundred dollars for every day that such report shall be delayed or withheld, and for every day that it shall fail to report any such omitted matter, unless the time therefor shall have been extended by the superintendent as provided by section forty-nine of this chapter. The moneys forfeited by this section, when recovered shall be paid into the state treasury to reimburse the state for the sums advanced by it for the expenses of the department.

Source.—The greater part of the section is derived from former § 21. The provision specifying the contents of the report and that requiring publication by the bank come from former § 24. The provision as to special reports is new. The provision requiring reports in regard to dividends comes from former § 27, subd. 10. The penalty for failure to report is taken from former § 22.

Amended by L. 1916, chap. 96. In effect March 30, 1916.

CROSS-REFERENCES.—Powers and duties of superintendent in regard to reports, see §§ 42, 43.

Application of section to individual bankers, see § 143.

Annual report of unclaimed deposits, see § 134.

Reports of foreign banks, see § 147; of private bankers, see § 170; of trust companies, see § 218; of savings banks, see § 273; of investment companies, see § 298; of safe deposit companies, see § 329; of personal loan companies and personal loan brokers, see § 365; of savings and loan associations, see § 413; of credit unions, see § 477.

IF A BANK FAILS TO MAKE THE REQUIRED REPORT, it is subject to the forfeitures specified in this section, or the superintendent may proceed under § 57. Atty.-Gen. Rep. (1908) 400.

MUST REPORT IN PRESCRIBED FORM.—A bank has no authority to change the form of report prescribed by the superintendent. If the prescribed form fails to cover all the actual facts, it is competent for the bank to supplement the report by incorporating therein a statement of such facts. *Atty.-Gen. Rep. (1908) 400.*

A bank has no authority to report as "due on cashiers' checks" a substantial amount avowedly set aside arbitrarily as a "guarantee fund, as an offset to possible loans, failures, defalcations and other unfortunate conditions." *Atty.-Gen. Rep. (1908) 400.*

CANNOT WITHHOLD PART OF EARNINGS OR SURPLUS.—A bank cannot withhold a substantial portion of its earnings or surplus and not report the same to the superintendent. *Atty.-Gen. Rep. (1908) 400.*

PREFERRED DEPOSITS.—The report of a bank, trust company, or individual banker should state separately under the head of "preferred deposits" the deposits the payment of which, in case of insolvency, is preferred by law, or otherwise over other deposits. *Atty.-Gen. Rep. (1905) 431.*

PERJURY.—An officer who verifies a report knowing it to be false is guilty of perjury. *People v. Ostrander, 64 Hun 335, aff'd 135 N. Y. 639.*

The oath required to be taken by the officers verifying a report is "an oath required by law" within the meaning of Penal Law, § 1620, defining perjury. *People v. Grout, 85 Misc. 570, 577.*

An officer of a savings bank, having been indicted for perjury for verifying a false report, demurred to the indictment on the ground that he was merely an assistant treasurer and not one of the "two principal officers" and consequently was incompetent to take the oath. It was held that, he having assumed to be the proper person to make the verification, could not be allowed to set up that he was not. *People v. Trumpbour, 64 Hun 346, aff'd 135 N. Y. 638.*

DAMAGE CAUSED BY FALSE REPORT.—A person who has suffered loss because of a false report may recover damages from the officers who verified the report knowing it to be false. *Morse v. Swits, 19 How. Pr. 275.*

§ 134. Annual report of unclaimed deposits, dividends and interest; publication; penalty for non-compliance.

In the month of September in each year, and on or before the tenth day thereof, every bank shall make a written report to the superintendent of banks, verified by the oaths of the president or vice-president and cashier or assistant cashier, which report shall contain a true and accurate statement of all deposits made with the bank and all dividends declared and interest accrued upon any of its stock or other evidences of indebtedness, which on the first day of August preceding such report amounted to fifty dollars or over and had remained unclaimed by any person or persons authorized to receive the same for five years then next preceding. Such statement shall set forth the date of each such deposit, its

amount and the name and last known place of residence or post-office address of the person making it, the name of each person in whose favor and the time when any such dividend may have been declared or any such interest may have accrued, its amount, and upon what number of shares or upon what amount of stock or other evidences of indebtedness of such bank, it was declared or accrued. In case any such bank shall at said date have held no such unclaimed deposits, dividends or interest, it shall at the time above specified make a written report to the superintendent so stating, which report shall be verified as herein above provided. No deposits, dividends or interest shall be deemed unclaimed within the meaning of this section if it appears from the books of the bank or from other written evidence on file with the bank that the person or persons authorized to receive them have knowledge thereof.

Every such bank which reports any unclaimed deposits, dividends or interest under the provisions of this section shall cause to be published once in each week for two successive weeks in a newspaper designated by the superintendent published in the county and in the village or city in which such bank is located, if there be a newspaper published therein, and at least once in a newspaper published at Albany in which notices by state officers are required to be published, a true copy of such report, and shall file with the superintendent of banks on or before the first day of October in each year proof by affidavit of such publication. The expense of such publication shall be paid by the bank, but if, on or before the first day of August in that year, the bank shall have mailed, postage prepaid, to each person authorized to receive any such unclaimed deposit, dividend or interest, at his last known place of residence or post-office address, a statement showing the amount to which such person is entitled and requesting written acknowledgment thereof, the bank may reimburse itself for such expense by deducting the amount thereof from the sums due any such person or persons who shall not have made written acknowledgment before the filing of such report with the superintendent, in the proportion that each such sum bears to the aggregate thereof.

Any such bank failing to make any report or to file any affidavit of publication required by this section shall forfeit to

the people of the state the sum of one hundred dollars for each day such report or the filing of such affidavit of publication shall be so delayed or withheld, unless the time therefor shall have been extended by the superintendent as provided by section forty-nine of this chapter.

Source.—Former § 30.

CROSS-REFERENCES.—Powers and duties of superintendent with regard to unclaimed deposits, etc., see §§ 45–47.

Application of section to individual bankers, see § 143.

Similar provision as to private bankers, see § 157; as to trust companies, see § 219; as to savings banks, see § 274.

PRESENTMENT OF BANK BOOK WITHIN FIVE YEARS.—Where the depositor has within five years presented his bank book or pass-book to the bank for the purpose of having his interest or dividends credited, such deposit need not be included. Atty.-Gen. Rep. (1906) 510.

§ 135. Liability of bank for assessments by superintendent.

When the superintendent, pursuant to the powers conferred on him by article two of this chapter shall have levied any assessment upon any bank and shall have duly notified such bank of the amount thereof, the amount so assessed shall become a liability of and shall be paid by such bank to the superintendent.

Source.—New.

CROSS-REFERENCES.—Assessments to defray expenses of banking department, see § 17 and cross-references there given.

Assessments for incroachments on reserves, see § 30 and cross-references there given.

Application of section to individual bankers, see § 143.

Similar provision as to trust companies, see § 220; as to savings banks, see § 277; as to investment companies, see § 299; as to safe deposit companies, see § 330; as to personal loan companies and brokers, see § 366.

§ 136. Preservation of books and records of bank.

Every bank shall preserve all its records of final entry, including cards used under the card system and deposit tickets, for a period of at least six years from the date of making the same or from the date of the last entry thereon.

Source.—New.

CROSS-REFERENCES.—Application of section to individual bankers, see § 143.

Similar provision as to private bankers, see § 165; as to trust companies, see § 221; as to investment companies, see § 300; as to personal loan companies and brokers, see § 367.

§ 137. Change from state to national bank.

Whenever any bank shall have become a corporation for carrying on the business of banking under the laws of the United States, it shall notify the superintendent of banks of this state of such fact, and shall file with him a copy of its authorization as a national banking association certified by the comptroller of the currency. It shall thereupon cease to be a corporation under the laws of this state, except that for the term of three years thereafter, its corporate existence shall be deemed to continue for the purpose of prosecuting or defending suits by or against it, and of enabling it to close its concerns, and to dispose of and convey its property.

Such change from a state to a national bank shall not release any such bank from its obligations to pay and discharge all the liabilities created by law or incurred by it before becoming a national banking association, or any tax imposed by the laws of this state up to the date of its becoming such national banking association in proportion to the time which has elapsed since the next preceding payment therefor, or any assessment, penalty or forfeiture imposed or incurred under the laws of this state up to the date of its becoming a national banking association.

Source.—Former §§ 78–81 rewritten and matter relating to the conduct of the bank after becoming a national banking association has been eliminated for obvious reasons.

CROSS-REFERENCES.—Change from national to state bank, see § 104.

Change from state bank to trust company, see § 138.

Laws of United States authorizing change, see U. S. Rev. Stat., §§ 5154, 5155.

FEDERAL STATUTE SUFFICIENT AUTHORITY.—No authority other than that conferred by Congress is required to enable a bank existing under a general or special state law to become a national bank. The certificate of the Comptroller is conclusive as to the completeness of the organization. *Casey v. Galli*, 94 U. S. 673.

EFFECT ON CLAIMS OF STATE BANK.—Debts due to the state bank pass to and are enforceable by the national bank. *City Nat. Bank v. Phelps*, 86 N. Y. 484.

The national bank is but a continuance of the same body under a changed jurisdiction, and between it and those who have contracted with it, it retains its identity and may, as a national bank, enforce contracts made with it as a state bank. *City Nat. Bank v. Phelps*, 97 N. Y. 44.

"DEFENDING SUITS."—The taking of an appeal in the name of the state bank from a judgment rendered against it is a defense of a suit within the meaning of this section, and if taken within three years after the change to a national bank, is proper. *Clafin v. Farmers', etc., Bank*, 54 Barb. 228.

TAXATION OF NATIONAL BANK SHARES.—The legislature may properly provide that the shares of the national bank shall be assessed for taxation at their actual value. *People v. Commissioners*, 67 N. Y. 516.

VOLUNTARY DISSOLUTION.—A state bank was converted into a national bank. It did business as such for about ten years, when it voluntarily dissolved. Many years thereafter an action was brought against both the state bank and the national bank. Held, that service of summons on the former cashier of the bank was of no effect, and should be set aside. *Hayden v. Bank of Syracuse*, 15 N. Y. Supp. 48.

§ 138. Change from state bank to trust company.

Any bank may become a trust company with all the powers and subject to all the obligations and duties of trust companies organized under the provisions of article five of this chapter. A bank desiring to become a trust company shall proceed in the following manner:

1. It shall call a meeting of its stockholders upon not less than twenty days' written notice to each stockholder, which notice shall be served personally or by mail, postage prepaid, directed to each stockholder at his last known post-office address, and shall contain a statement of the purpose for which such meeting is called. Proof by affidavit of the due service of such notice shall be filed in the office of the bank at or before the time of such meeting.

2. At the meeting so called the stockholders of such bank may, by a vote of at least two-thirds of the entire capital stock, direct that such bank shall be transformed into a trust company. In the event that such action is taken by the prescribed vote, a resolution may be adopted directing not less than thirteen nor more than thirty of the stockholders of such bank, who shall be designated by name in such resolution, to execute an organization certificate in the form and manner required by section one hundred and eighty of this chapter. The proceedings of such meeting shall be entered in the minutes of the bank.

3. The persons named in such resolution shall thereafter subscribe and acknowledge in duplicate said organization certificate and attach thereto copies of the minutes of such meeting, duly verified by the president and secretary of the meeting, and duplicates of the affidavits of service of the notice of such meeting, and shall submit both of such duplicate certificates to the superintendent at his office.

4. When the superintendent shall have endorsed his approval on the organization certificate as provided by section twenty-three of this chapter, such bank shall be held and regarded as a trust company subject to the provisions of article five of this chapter but shall transact no business as such trust company other than that relating to its organization until it shall have complied with the conditions precedent to commencing business prescribed by section one hundred and eighty-three of this chapter.

At the time when the corporate existence of such trust company begins all the property of such bank shall immediately by act of law and without any conveyance or transfer be vested in and become the property of such trust company. The persons named in such organization certificate shall be the directors of such trust company until the first annual election of directors thereafter, and shall have power to take all necessary measures to perfect its organization and to adopt such regulations concerning its business and management as may be proper and not inconsistent with law.

Source.— New.

CROSS-REFERENCES.— Change from national to state bank, see § 104.

Change from state to national bank, see § 137.

Reincorporation of investment companies, see § 309.

Change from personal loan association to personal loan company, see § 343.

§ 139. Restrictions on officers, directors and employees.

No officer, director, clerk or other employee of any bank, and no person in any way interested or concerned in the management of its affairs, shall as individuals discount, or directly or indirectly, make any loan upon any note or other evidence of debt, which he shall know to have been offered for discount to such corporation, and to have been refused. Every person violating the provisions of this subdivision, shall, for each offense, forfeit to the people of the state twice the amount of the loan which he shall have made.

No officer, director, clerk or other employee of any bank shall borrow, directly or indirectly, from the bank with which he is connected any sum of money without the written approval of a majority of the board of directors thereof filed in the office of the bank or embodied in a resolution adopted by a majority vote of such board exclusive of the director to whom the loan is made; and in no event shall any officer of a bank located in a city of the first class borrow any sum of money from such bank. If an officer, director, clerk or other employee of any bank shall own or control a majority of the stock of any other corporation a loan to that corporation shall be considered for the purpose of this subdivision as a loan to such officer, director, clerk or other employee. Every person knowingly violating this provision shall, for each offense, forfeit to the people of the state twice the amount which he shall have borrowed.

Source.—The first paragraph is from former § 27, subd. 6. The second paragraph is from former § 27, subd. 7.

The prohibition against borrowing by any officer of a bank located in a city of the first class is new.

CROSS-REFERENCES.—Prohibition against loans by bank to officers, etc., see § 108, subd. 8.

Similar provision as to trust companies, see § 222.

§ 140. Prohibitions against encroachments upon certain powers of banks.

No person unauthorized by law shall subscribe to or become a member of, or be in any way interested in any association, institution or company formed or to be formed for the purpose of issuing notes or other evidences of debt to be loaned or put in circulation as money; nor shall any such persons subscribe to or become in any way interested in any bank or fund created or to be created for the like purposes or either of them. No corporation, domestic or foreign, other than a national bank or a federal reserve bank, unless expressly authorized by the laws of this state, shall employ any part of its property, or be in any way interested in any fund which shall be employed for the purpose of receiving deposits, making discounts, or issuing notes or other evidences of debt to be loaned or put into circulation as money. All notes and other securities for the payment of any money or the delivery of any property, made or given to any such association, institution or company, or made or given to secure the payment of any money

loaned or discounted by any corporation or its officers, contrary to the provisions of this section shall be void.

No person, association of persons or corporation, unless expressly authorized by law, shall keep any office for the purpose of issuing any evidences of debt, to be loaned or put in circulation as money; nor shall they issue any bills or promissory notes or other evidences of debt for the purpose of loaning them or putting them in circulation as money, unless thereto specially authorized by law.

Every person, and every corporation, director, agent, officer or member thereof, who shall violate any provision of this section, directly or indirectly or assent to such violation shall forfeit one thousand dollars to the people of the state.

Source.—Former §§ 107, 108.

CROSS-REFERENCES.—Prohibition against granting of special charters to banking corporations, see Const., art. 8, § 4.

Prohibition against exercise by corporations of power not given by law, see Gen. Corp. Law, § 10.

Use of words "bank" and "banking" in name of foreign corporation, see Gen. Corp. Law, § 15.

Prohibition against exercise of banking powers by corporations not organized under the Banking Law, see Gen. Corp. Law, § 22, *post*.

FOR HISTORY OF "RESTRAINING ACT" AND "FREE BANKING," see *Tracy v. Talmadge*, 18 Barb. 456; *Pratt v. Short*, 79 N. Y. 437.

BUSINESS CORPORATIONS EXERCISING BANKING POWERS.—Corporations organized under the Business Corporations Law violate this section if they accept weekly deposits to be returned upon the happening of a contingency with interest after they amount to \$100; or if they deduct interest at the time loans are made upon leases of personal property. Atty.-Gen. Rep. (1913) 188; Atty.-Gen. Rep. (1913) 194.

A business corporation organized for the purpose of advertising and increasing the sales of retail merchants and selling them printed matter is not authorized to issue checks, trading stamps or other evidence of debt which can be circulated as money, or to create or be interested in a fund for the purpose of receiving deposits, making discounts or issuing notes or other evidence of debt to be loaned or put into circulation as money. Atty.-Gen. Rep., Oct. 14, 1915.

A proposed corporation, one of whose objects is "to receive from customers, for safe-keeping only, moneys or other property, said moneys not being subject to be drawn upon by check or draft, but solely on demand, and not subject to the payment of interest thereon," is not entitled to incorporate under the Business Corporations Law. Atty.-Gen. Rep. (1910) 419.

Where a corporation organized under the Business Corporations Law received annual payments of money for which it issued certificates whereby it agreed to repay the holder a specified sum at the expiration of ten years, it was held that, in the absence of any showing that such moneys were not

borrowed for a lawful purpose of the corporation, this did not constitute a transaction of business in violation of the Banking Law. *Jacobs v. Monaton Realty Inv. Corp.*, 212 N. Y. 48, rev'g 160 App. Div. 449, which aff'd 80 Misc. 649.

A contract whereby a domestic business corporation holding certain leases, calling for installment payments on articles sold to its customers, secured from another corporation certain sums of money on the leases as collateral security, was held to be void because in violation of the prohibition against unauthorized banking. *Const v. Terminal Clearing House Assoc.*, 86 Misc. 295.

DEPARTMENT STORE BANKS.—Opinion that this section and section 22 of Gen. Corp. Law are violated by the "Department Store bank"—that is, an arrangement by a business corporation whereby money is deposited with it, at interest, which deposit may be used in payment of purchases or may be withdrawn in cash at any time. *Atty.-Gen. Rep.* (1912) 185.

EFFECT OF VIOLATION.—A note discounted in violation of this section is void. *New York State L. & T. Co. v. Helmer*, 77 N. Y. 64; *New York Firemen Ins. Co. v. Ely*, 2 Cow. 678; *Utica Ins. Co. v. Scott*, 19 Johns. 1.

RECOVERY ON ORIGINAL CONSIDERATION.—Notwithstanding a note be void under this section, recovery may be had on the original consideration. *Duncomb v. New York, etc., R. Co.*, 84 N. Y. 190; *Pratt v. Short*, 79 N. Y. 437; *Pratt v. Eaton*, 79 N. Y. 449; *Utica Ins. Co. v. Caldwell*, 3 Wend. 296; *Utica Ins. Co. v. Hunt*, 1 Wend. 56; *Utica Ins. Co. v. Kip*, 8 Cow. 20.

It seems that a promissory note which is void because discounted in violation of this section, is nevertheless competent evidence in an action to recover the money loaned. *Utica Ins. Co. v. Bloodgood*, 4 Wend. 652.

WHAT NOT A VIOLATION.—Collecting in advance the interest on a single note taken to secure a pre-existing debt is not a violation of the section. *New York Firemen Ins. Co. v. Sturges*, 2 Cow. 664.

"This is a penal act and is to be constructed strictly. It was not intended to prohibit individuals or corporations from lending their own proper funds upon promissory notes by way of discount or otherwise." *People v. Brewster*, 4 Wend. 498.

This does not prohibit the issuance of non-negotiable bonds for the purpose of borrowing money. *Barry v. Merchants' Exch. Co.*, 1 Sandf. Ch. 280, 313.

The issuance of an interest-bearing certificate of deposit for money actually deposited by a corporation having authority to receive deposits of money is not a "discounting" within the intent of this section. *Pardee v. Fish*, 60 N. Y. 265.

UNAUTHORIZED BANKING IS NOT A NUISANCE.—*Atty.-Gen. v. Bank of Niagara*, 1 Hopk. 354.

FOREIGN CORPORATIONS.—By this section a national bank, organized and doing business in another state, is prohibited from keeping an office of discount or deposit in this state, and cannot maintain an action upon any note discounted by it at such office. *National Bank v. Phoenix Warehousing Co.*, 6 Hun 71; *New Hope, etc., Bridge Co. v. Poughkeepsie Silk Co.*, 25 Wend. 648.

Where a foreign corporation, maintaining an office in violation of this section, made a contract with a New York broker to receive of him all its notes which he should procure in his business as a broker, and pay him the amount

thereof in cash, less a discount of $\frac{1}{4}$ of 1 per cent., it was held that such contract was void. *De Groot v. Van Duzer*, 20 Wend. 390, reversing 17 Wend. 170.

WHAT CONSTITUTES KEEPING AN OFFICE.—Where a foreign corporation authorizes one of its officers to attend from time to time at certain places in this State for the purpose of receiving deposits or of discounting paper with the funds of the corporation, such places of attendance are to be considered as offices of discount and deposit. *Taylor v. Bruen*, 2 Barb. Ch. 301.

MAY ACT AS TRUSTEE UNDER A MORTGAGE.—This section does not prevent a foreign trust company from acting as trustee under a mortgage given to secure an issue of bonds of a domestic corporation without procuring a license from the State. *Atty.-Gen. Rep.* (1902) 255.

MAY PURCHASE PROMISSORY NOTES.—A foreign corporation is not prohibited from purchasing promissory notes. *American Life Ins. Co. v. Dobbin*, *Lalor* 252.

Section not violated by foreign corporation sending an agent into the State to secure a doubtful debt and, while here, doing a single act of drawing a bill of exchange and paying out its own circulating notes in pursuance of its leading object. *Western Reserve Bank v. Potter*, *Clarke's Ch.* 439.

LOAN ON MORTGAGE.—The fact that a foreign corporation was maintaining an office here in violation of the statute was held not to invalidate a loan made in this State by the corporation, secured by a mortgage on land situated here, it not being shown that the loan or security was part of or in any way in aid of the illegal business or necessarily connected with it. *Bard v. Poole*, 12 N. Y. 495.

§ 141. Use of sign, or words indicating bank by unauthorized persons prohibited.

No person, except a national bank, a federal reserve bank, an individual banker or a corporation duly authorized by the superintendent of banks to transact business in this state, shall make use of any office sign at the place where such business is transacted having thereon any artificial or corporate name, or other words indicating that such place or office is the place or office of a bank; nor shall any such person or persons make use of or circulate any letterheads, bill-heads, blank forms, notes, receipts, certificates, circulars, or any written or printed or partly written and partly printed paper whatever, having thereon any artificial or corporate name, or other word or words, indicating that such business is the business of a bank.

Every person violating this provision shall forfeit the sum of one thousand dollars, but this section shall not apply to any individual, partnership or unincorporated association engaged in the business of banking prior to May twenty-seventh, eighteen hundred and eighty-five.

Source.—Former § 112.

CROSS-REFERENCES.—Penal provisions as to unauthorized use of words “bank,” “banker” etc., see Penal Law, §§ 302, 666.

EFFECT ON PRIVATE BANKERS.—Since the word “bank” is defined in § 2 as meaning a corporation, it would seem clear that private bankers, whether or not subject to the supervision of the superintendent, are not prohibited by this section from using the words “banker,” “banking,” etc., on their stationery provided they do not give the impression that the business is that of an incorporated bank. See Atty.-Gen. Rep. (1899) 381; Atty.-Gen. Rep. (1901) 219; Atty.-Gen. Rep. (1905) 423.

AN “INDIVIDUAL” BANKER can properly advertise himself as “transacting a general banking business.” Atty.-Gen. Rep. (1905) 423.

EXEMPTION OF CERTAIN PRIVATE BANKERS.—The exception made in this section and in Sec. 302 of the Penal Law in favor of persons engaged in banking prior to May 27, 1885, is a personal privilege. One who subsequent to that date purchased the business of a private banker did not thereby obtain the right to continue the use of a name containing prohibited words. Such right is not transferable. Atty.-Gen. Rep. (1912) 255.

The exemption is a personal privilege and does not pass to a purchaser or survive death. Atty.-Gen. Rep. (1912) 491.

§ 142. Bills payable otherwise than in money prohibited.

No person shall give, pay or receive in payment, or in any way circulate, or attempt to circulate, any bank bill, or any promissory note, bill, check, draft or other evidence of debt issued by any bank, individual banker or private banker, which shall be made payable otherwise than in lawful money of the United States.

Every person violating this provision shall forfeit to the people of the state the face amount or value of such bill, note or other evidence of debt so given, paid, received, circulated, or offered, to any person who will sue for the same within sixty days after the commission of the offense.

Source.—Former § 110, with insertion of words “or private banker.”

§ 143. Rights of existing individual bankers preserved.

Every individual, partnership or unincorporated association which on the date on which this act takes effect is lawfully engaged in the business of a bank of discount and deposit under due authorization from the superintendent of banks is hereby authorized to continue in such business subject to sections one hundred five, one hundred ten, one hundred twelve, one hundred fourteen, one hundred fifteen, one hundred thirty-three, one hundred thirty-four, one hundred thirty-five and one hundred thirty-six of this article and to the sections of article two of this chapter relating to individual bankers.

Source.—New. Under the present law no provision is made for the authorization in future of individual bankers. At the time the act became effective only one individual banker was transacting business in the state.

CROSS-REFERENCES.—Definition of "individual banker," see § 2.

LIABILITY OF PARTNER OF INDIVIDUAL BANKER.—One who has filed a certificate of partnership with the superintendent is not relieved from liability for deposits made after he has retired from the firm by one who had been a depositor before such retirement, if the depositor had no actual notice of the retirement. And this is true even though the depositor never knew that the retiring partner was a member of the firm. *Howell v. Adams*, 68 N. Y. 314.

PLACE OF RESIDENCE FOR TAXATION.—For the purpose of taxing his banking capital, the residence of an individual banker is in the town or ward specified in the certificate as the location of his banking office. *Miner v. Fredonia*, 27 N. Y. 155.

RETURN OF DEPOSIT ON CLOSE OF BUSINESS.—Upon discontinuance of business by an individual banker, if the superintendent is satisfied that he has incurred no penalties and has discharged all his obligation, the \$1,000 deposit should be returned to him. *Atty.-Gen. Rep.* (1889) 316.

§ 144. Conditions to be complied with by foreign banking corporations applying for license.

Every foreign banking corporation before being licensed by the superintendent of banks to transact in this state the business of buying, selling, paying or collecting bills of exchange, or of issuing letters of credit or of receiving money for transmission or transmitting the same by draft, check, cable or otherwise, or of making sterling or other loans, or any part of such business, or before maintaining in this state any agency for carrying on such business or any part thereof, shall subscribe and acknowledge and submit to the superintendent of banks at his office, a separate application certificate in duplicate for each agency which such foreign corporation proposes to establish in this state, which shall specifically state:

1. The name of such foreign banking corporation.
2. The place where its business is to be transacted in this state; and the name of the agent or agents through whom such business is to be transacted.
3. The amount of its capital actually paid in cash and the amount subscribed for and unpaid.
4. The actual value of the assets of such corporation, which must be at least two hundred and fifty thousand dollars in excess

of its liabilities; and a complete and detailed statement of its financial condition as of a date within sixty days prior to the date of such application.

At the time such application certificate is submitted to the superintendent, such corporation shall also submit a duly exemplified copy of its charter and a verified copy of its by-laws, or the equivalent thereof.

Source.—Former §§ 33-a, 33-b, rewritten. The requirement of a statement of the applicant's financial condition as of a date within sixty days prior to the date of the application, is new.

CROSS-REFERENCES.—Powers and duties of superintendent with regard to licensing of foreign corporations, see §§ 27-29.

Similar provision as to foreign investment companies, see § 303.

A bank organized under the laws of Great Britain with head office in London which maintains in this State an agency for the transaction of its business in the United States and which is duly licensed to do business in the United States under sections 145 and 146 of the Banking Law and which hitherto has been engaged in issuing commercial letters of credit in favor of sellers of merchandise in various foreign countries, who are authorized by the letter of credit to draw drafts on the bank, payable at the head office of the bank in London on ninety day's sight, may issue this letter of credit through its New York agency, authorizing the sellers of merchandise in whose favor the credit is issued, to draw ninety days' sight drafts upon its New York agency which will be authorized by the bank to accept said drafts on presentation and pay them at maturity. Atty.-Gen. Rep., Sept. 29, 1915.

§ 145. When foreign banking corporation may transact business in this state.

No foreign banking corporation, other than a bank organized under the laws of the United States, shall transact in this state the business of buying, selling or collecting bills of exchange, or of issuing letters of credit or of receiving moneys for transmission or transmitting the same by draft, check, cable or otherwise, or of making sterling or other loans or transacting any part of such business, or maintaining in this state any agency for carrying on such business, or any part thereof, unless such corporation shall have:

1. Been authorized by its charter to carry on such business and shall have complied with the laws of the state or country under which it is incorporated;

2. Furnish to the superintendent such proof as to the nature and character of its business and as to its financial condition as he may require;

3. Designated the superintendent of banks by a duly executed instrument in writing, its true and lawful attorney, upon whom all process in any action or proceeding by any resident of the state against it may be served with the same effect as if it were a domestic corporation and had been lawfully served with process within the state;

4. Paid to the superintendent of banks a license fee of two hundred and fifty dollars;

5. Received a license duly issued to it by the superintendent as provided in section twenty-seven of this chapter.

This section shall not be construed to prohibit foreign banking corporations which do not maintain an office in this state for the transaction of business from making loans in this state secured by mortgages on real property, nor from accepting assignments of mortgages covering real property situated in this state, nor from making loans through correspondents which are engaged in the business of banking in this state under the laws of the state.

Source.—Former §§ 33-a, 33-b, 34.

CROSS-REFERENCES.—Similar provision as to foreign investment companies, see § 304.

As to service of process on foreign corporations, see Code Civ. Proc., § 432.

LOANS ON REAL ESTATE.—Previous to the amendment of former § 33-a by ch. 484 of Laws of 1913, a bank situated in another state could not make even an isolated loan on real estate located in this state without securing a license from the superintendent. Atty.-Gen. Rep. (1912) vol. 2, p. 495.

§ 146. Rights and privileges of foreign banking corporation under license; effect of revocation.

When the superintendent shall have issued a license to any such banking corporation, it may engage in the business specified in the immediately preceding section of this article at the location specified in such license for a period of one year from the date of such license; and such license may, in the discretion of the superintendent, be re-issued from year to year upon the payment by such foreign banking corporation of the sum of two hundred and fifty dollars upon each date that such license is re-issued. No such license shall be transferable or assignable and shall be at all times conspicuously displayed in the place of business specified therein. In the event that such license shall

have been revoked by the superintendent, as provided in section twenty-nine of this chapter, it shall be surrendered to the superintendent within twenty-four hours after such corporation has received written notice of such revocation.

Whenever the superintendent shall have revoked any such license and shall have taken the action to make such revocation effective specified in section twenty-nine of this chapter, all the rights and privileges of such foreign corporation to transact business in this state shall forthwith cease and determine.

Source.—Former § 33-b.

CROSS-REFERENCES.—Similar provisions as to foreign investment companies, see §§ 305, 308.

A foreign corporation authorized by license from the Superintendent of Banks to transact business at a certain place, cannot appoint agents throughout the State, who sell for it money orders for transmitting funds to foreign countries. Atty.-Gen. Rep., May 11, 1915.

§ 147. Reports of foreign banking corporations; penalties.

Every foreign banking corporation licensed by the superintendent to engage in business in this state, shall at such times and in such form as the superintendent shall prescribe, make written reports to the superintendent under the oath of one of its officers, managers or agents transacting business in this state, showing the amount of its assets and liabilities and containing such other matters as the superintendent shall prescribe. If any such corporation shall fail to make any such report as directed by the superintendent, it shall be subject to the penalties prescribed by section one hundred and thirty-three of this article, and any false statement contained in any such report or in any other sworn statement made to the superintendent of banks by such corporation in pursuance of the provisions of this article shall constitute perjury. Nothing herein contained shall be deemed to modify the prohibition of section one hundred and forty of this chapter.

Source.—Former § 33-b.

CROSS-REFERENCES.—Reports required of other persons, see § 133 and annotations thereto.

§ 148. Deposits of minors and trust deposits and deposits in the names of more than one person.

When any deposit shall be made by or in the name of any minor, the same shall be held for the exclusive right and benefit of such minor, and free from the control or lien of all other

persons, except creditors, and shall be paid, together with the interest thereon to the person in whose name the deposit shall have been made, and the receipt or acquittance of such minor shall be a valid and sufficient release and discharge for such deposit or any part thereof to the bank. When any deposit shall be made by any person describing himself in making such deposit as trustee for another and no other or further notice of the existence and terms of a legal and valid trust than such description shall have been given in writing to the bank in the event of the death of the person so described as trustee, such deposit or any part thereof, together with the dividends or interest thereon, may be paid to the person for whom the deposit was thus stated to have been made. When a deposit shall have been made by any person in the name of such depositor and another person and in form to be paid to either, or the survivor of them, such deposit thereupon and any additions thereto made, by either of such persons, upon the making thereof, shall become the property of such persons as joint tenants, and the same, together with all interest thereon, shall be held for the exclusive use of the persons so named, and may be paid to either during the life time of both, or to the survivor after the death of one of them; and such payment and the receipt or acquittance of the one to whom such payment is made, shall be a valid and sufficient release and discharge to said bank, for all payments made on account of such deposit prior to the receipt by said bank of notice in writing signed by any one of such joint tenants, not to pay such deposit in accordance with the terms thereof.

Source.—This section is an adaptation of former § 144 relating to savings banks.

CROSS-REFERENCES.—Similar provision as to trust companies, see § 198; as to savings banks, see § 249. See the annotations to the last cited section.

ARTICLE IV.**Private Bankers.****Section 150. Scope of article.**

151. Verified certificate to be submitted by private banker.
152. Conditions precedent to transacting business.
153. Rights of private banker under authorization certificate.
154. Permanent capital; increase or decrease.
155. Segregation of investments; how title to be taken.
156. Depositors preferred in case of insolvency.
157. Annual report of unclaimed deposits.
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160. Conditions entitling private banker to certain exemptions.
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163. When real estate and certain securities to be sold.
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165. Books and records.
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169. Monthly meetings and reports.
170. Reports to superintendent.
171. Restrictions as to place of business.
172. Violations of article prohibited.

§ 150. Scope of article.

The provisions of this article, except as hereinafter further limited, shall apply to every private banker engaged in the business of private banking in any city of the state,

1. Who makes use of any office sign bearing thereon the word "bank", "banker", "banking", or any derivative or compound of the word "bank", or any words in a foreign language having the same or similar meanings, or who makes use of any exterior sign bearing thereon any such word or words or any words whatever to indicate to the general public that such person is engaged in the business of a private banker; or

2. Who pays or credits interest, or pays, credits or gives any bonus or gratuity or anything of value, except on certificates of deposit actually outstanding at the time this act takes effect, to any depositor on a deposit balance of (a) less than five hundred

dollars, if such private banker is engaged in business in a city of the first class, or (b) less than three hundred dollars, if such private banker is engaged in business in a city of the second class, or (c) less than two hundred dollars, if such private banker is engaged in business in a city of the third class; or

3. Who receives money on deposit for safekeeping or for transmission to others or for any other purpose in such sums that the average of the separate deposits so received by such private banker since April first, nineteen hundred fourteen, or during any twelve successive months, or for such period, if less than twelve months, that such private banker has been engaged in such business, exclusive of dividend checks, coupons or other small collection items collected by such private banker for customers in the ordinary course of business, is (a) less than five hundred dollars, if such private banker is engaged in such business in a city of the first class having a population of over one million, or (b) less than three hundred dollars, if engaged in business in any other city of the first class, or (c) less than two hundred dollars, if engaged in business in any city of the second class, or (d) less than one hundred dollars, if engaged in such business in any city of the third class.

Source.—New. Subdivision 4 of § 29d of the General Business Law formed the groundwork of subdivision 3 of this section. The former private banking law was contained in article 3-a of the General Business Law, as added by chapter 348, Laws of 1910, and amended by chapter 393, Laws of 1911. It was found ineffective, however, as a regulatory measure. By its provisions nominal restrictions were placed upon certain classes of private bankers *in cities of the first class*; and total exemption from its provisions could be obtained without any regard to the class of business transacted (Cf. subd. 5, § 29-d, Gen. Bus. Law, as amended by chapter 393, Laws of 1911).

The present provisions were designed to give more adequate protection to those who, on account of the inducements offered them of high interest on small accounts, deposit their savings with private bankers. The exemptions of the present law are based upon the class of business transacted. The recommendations of the banking commission as to standards for exemptions were somewhat liberalized before the present law was finally enacted.

All private bankers in *any* city of this state are within the scope of the present law, unless they conform their business to certain standards as to balances on which they credit interest, as to the size of average deposits which they accept, and as to the manner in which they hold themselves out to the public. Those meeting slightly lower standards, but not so low in the larger cities as to permit of competing for savings accounts, are ex-

empted from certain of its provisions. No attempt is made by the present law to regulate private banking conducted outside cities.

The United States Supreme Court held that chapter 348, Laws of 1910, was a legitimate exercise of the police power. *Engel v. O'Malley*, 219 U. S. 128.

CROSS-REFERENCES.—Definition of "private banker," see § 2.

Definition of "population," see § 3.

Prohibition against encroachments on certain powers of banks, see § 140.

Prohibition against use of sign with words indicating bank, see § 141.

SUBDIVISION 1

Under the present law private bankers may use the word "bank," but the use of the term or of any of its derivatives, or the use of other words or the doing of acts which amount to a representation that the business of a bank is being conducted, renders the provisions of this article applicable. *Op. Atty.-Gen.*, June 1, 1914.

SUBDIVISION 2

Payment of interest on any balance less than the statutory minimum brings the banker within the provisions of this article. Averaging of balances is not permitted. *Op. Atty.-Gen.*, June 1, 1914.

SUBDIVISION 3

There is a transmission of money within the meaning of this subdivision where a banker sells his own draft on a foreign banking house with which he has a deposit. *Op. Atty.-Gen.*, June 1, 1914.

§ 151. Verified certificate to be submitted by private banker.

Within sixty days after this act takes effect, every private banker to whom this article is applicable, and every other individual, partnership or unincorporated association thereafter seeking to engage in business as such private banker in any city of the state, shall submit to the superintendent of banks at his office in Albany, a verified certificate in duplicate which shall state:

1. The full name, residence and post office address of such individual or of each member of such partnership or unincorporated association.

2. The state, or country, of which each individual named in such affidavit is a citizen.

3. The amount of permanent capital such individual, partnership or incorporated association has kept invested in his business as a private banker or has deposited in cash to be invested in such business.

4. The place at which such business is to be transacted.

5. If such private banker is engaged in business as a private banker in a city of the first class, the amount of deposit balance upon which such private banker pays or credits interest or pays, credits or gives any bonus or gratuity or anything of value to a depositor and whether the average of the separate deposits of such private banker since April first, nineteen hundred fourteen,

or for a period of twelve months immediately preceding the date of such verified certificate, exclusive of dividend checks, coupons or other small collection items collected by such private banker for customers in the ordinary course of business, has been five hundred dollars or more, if such private banker is engaged in business in such a city with a population of over one million, or two hundred dollars or more in any other such city; or, if the applicant has not already engaged in such business, said certificate shall state the minimum deposit balance upon which such applicant proposes to pay or credit interest or to pay, credit or give such bonus or gratuity, or thing of value.

6. Whether the applicant is applying for an authorization certificate or claims the right to engage in business as a private banker pursuant to the provisions of section one hundred sixty of this article.

Such certificate shall be verified by such individual or by one or more members of a partnership or unincorporated association, in the discretion of the superintendent, upon a form prepared by the superintendent of banks, which shall state that the affiant or affiants have read such certificate and that the facts therein stated are true.

Source.—New. Private bankers outside the scope of this article are not required to file any statement whatever with the Superintendent of Banks, and are not subject to any regulation by him. See note to § 172.

CROSS-REFERENCES.—Superintendent prohibited from filing defective certificate, see § 21.

Filing certificate for examination, see § 22.

Investigation of applicant and refusal or approval of superintendent, see § 23.

Issuance of authorization certificate, see § 24.

Similar provisions as to other persons and corporations engaging in business under the Banking Law, see § 102 and cross-references there given.

§ 152. Conditions precedent to transacting business under this article.

After the thirty-first day of October, nineteen hundred fourteen, no such private banker shall engage or continue in business as a private banker in any city of the state.

1. Until he has complied with the provisions of section one hundred sixty of this article, or

2. Until

(a) He shall have invested in his business as such private banker, or deposited in cash to be so invested, the amount of permanent capital specified in his verified certificate, as required by section one hundred fifty-four of this article; and

(b) He shall have deposited with the superintendent the securities required by section one hundred sixty-one of this article; and

(c) The superintendent of banks shall have issued an authorization certificate to him and shall have filed such certificate in his office. Provided, however, that a private banker lawfully engaged in business at the time this act takes effect may continue in such business after complying with the provisions of subdivision one, or of paragraphs (a) and (b) of subdivision two, of this section pending the final determination of his rights to engage in such business as provided in sections twenty-three, twenty-four and twenty-five of this chapter, and for one hundred and twenty days after such determination.

Source.—New. The proviso contained at the end of this section was inserted for the purpose of protecting a private banker against a failure of the superintendent to act upon such banker's certificate or affidavit. The last clause was inserted for the purpose of permitting such private banker, in case of an adverse decision by the superintendent, to adjust his affairs, or to test the question of whether the decision of the superintendent is reviewable.

When introduced into the Legislature the section began "After the thirty-first day of *July*," but it was amended before passage so as to become effective on November first. See § 502. But in §§ 161 and 172 the corresponding changes were not made. See note to § 161.

CROSS-REFERENCES.—For similar provisions as to other persons and corporations engaging in business under the Banking Law, see § 103 and cross-references there given.

§ 153. Rights and privileges of private banker under authorization certificate.

When the superintendent shall have issued an authorization certificate to any such private banker and shall have filed such certificate in his office, such private banker may engage in the business of banking at the location specified in such authorization certificate, subject to all the provisions of this article and of the provisions relating to private bankers of article two of this chapter.

Source.—New.

CROSS-REFERENCES.—Power of superintendent to revoke certificate, see § 29.

Effect of revocation, see § 158.

§ 154. Permanent capital; increase or decrease thereof.

Every such private banker shall keep unimpaired in his banking business the amount of permanent capital specified in the verified certificate submitted to the superintendent as provided in section one hundred fifty-one of this article. From time to time, with the written approval of the superintendent and upon good cause shown, such permanent capital may be increased or decreased. The permanent capital of a private banker not engaged in the business of banking at the time the verified certificate of such private banker is filed for examination by the superintendent, must be paid in cash.

Source.—New.

CROSS-REFERENCES.—Amount of permanent capital required for partial exemption, see § 160.

Investments of permanent capital see § 162.

Segregation of investments of permanent capital, see § 155.

§ 155. Segregation of investments of capital and deposits of private banker; title to be taken in descriptive name.

All securities, property and the evidences of title thereto, in which the permanent capital of and the deposits with any such private banker have been invested shall be segregated and kept separate and apart from all other property and assets of such private banker.

All deeds, mortgages, assignments and contracts and agreements received, taken, or entered into by any such private banker, in connection with such banking business, shall be received, taken, or entered into in the name of such private banker with the addition of the descriptive name "private banker" or "private bankers."

Source.—New. The purpose of this section is to make more effective the provisions of § 156 giving to depositors a preferred claim against the assets derived from capital and deposit investments.

§ 156. Depositors preferred in case of insolvency or suspension.

In case of the failure or suspension of any such private banker, the claims of persons for moneys on deposit or delivered for safe keeping or transmission shall be preferred against the proceeds of

any securities deposited by such banker with the superintendent and against such assets as shall be shown by the books of such banker, or by other legal evidence, to have been derived from the investment of such deposits, or from the investment of any permanent capital segregated and set aside for employment in his business as such banker. The depositors shall also share pro rata with general creditors in the proceeds of any other assets belonging to such banker.

Source.—New.

CROSS-REFERENCES.—For other priorities under the Banking Law, see § 78 and cross-references there given.

See § 155 for means of identifying securities derived from capital or deposit investments.

§ 157. Annual report of unclaimed deposits.

In the month of September in each year and on or before the tenth day thereof, every private banker engaged in business as a private banker under an authorization certificate in any city shall make a verified written report to the superintendent, which shall contain a true and accurate statement of all deposits made with such banker which, on the first day of August preceding such report, amounted to fifty dollars or over and which have remained unclaimed by any person or persons authorized to receive the same for five years then next preceding. Such statement shall set forth the date of each such deposit, its amount, and the name and last known place of residence or post office address of the person making it. In case any such banker at said date holds no such unclaimed deposits, such banker shall at the time above specified make verified written report to the superintendent so stating. No deposit shall be deemed unclaimed within the meaning of this section if it appears from the books of such banker or from other written evidence on file in his office that the person or persons authorized to receive such deposit have knowledge thereof.

Every such private banker reporting any unclaimed deposits under the provisions of this section shall cause to be published, once each week for two successive weeks, in a newspaper designated by the superintendent, published in the city in which the business of such private banker is located, if there be a newspaper

published therein, and at least once in a newspaper published at Albany in which notices by state officers are required to be published, a true copy of such report, and shall file with the superintendent of banks on or before the first day of October in each year proof by affidavit of such publication. The expense of such publication shall be paid by such private banker, but if, on or before the first day of August in that year, such private banker shall have mailed, postage prepaid, to each person authorized to receive any such unclaimed deposit at his last known place of residence or post office address, a statement showing the amount to which such person is entitled, and requesting written acknowledgment thereof, such private banker may deduct the amount thereof from the sums due any such person or persons who shall not have made written acknowledgment before the filing of such report with the superintendent, in the proportion that each such sum bears to the aggregate thereof.

Every such private banker failing to make any report or to file any affidavit of publication required by this section shall forfeit to the people of the state the sum of one hundred dollars for each day such report or the filing of such affidavit of publication shall be so delayed or withheld, unless the time therefor shall have been extended by the superintendent.

Source.—An adaptation of former § 30.

CROSS-REFERENCES.—Powers and duties of superintendent with regard to unclaimed deposits, see §§ 45-47.

Similar provision as to banks, see § 134; as to trust companies, see § 210; as to savings banks, see § 274.

§ 158. Effect of revocation by superintendent of authorization or of acceptance of affidavit.

Whenever the superintendent shall have revoked his authorization of any such private banker, or his acceptance of the affidavit of such banker provided for in section one hundred sixty of this article, and shall have taken the action to make such revocation effective specified in section twenty-six of this chapter, all the rights and privileges of such banker, resulting from such preceding authorization or acceptance, shall forthwith cease and determine.

Source.—New.

CROSS-REFERENCES.—Revocation of acceptance of private banker's affidavit, see § 26.

Revocation of authorization certificate, see § 28.

Rights under authorization certificate, see § 153.

Rights resulting from acceptance of affidavit, see § 160.

§ 159. Change of location.

Every such private banker may make a written application to the superintendent to change his place of business to another place in the same city. The application shall state the reason for such proposed change and shall be verified by such banker, or if a partnership or unincorporated association, by each member thereof. Such change may be made upon the written approval of the superintendent.

Source.—Former § 31.

CROSS-REFERENCES.—See cross-references under § 119.

§ 160. Conditions entitling private banker to certain exemptions, and extent of such exemptions.

Any such private banker who has claimed the right in his verified certificate to engage in business under the provisions of this section, and any such private banker authorized by the superintendent to engage in such business, may submit to the superintendent an affidavit executed in duplicate and verified in the same manner as such certificate, upon a form to be furnished by the superintendent containing a statement as follows:

1. If such private banker is engaged in business as a private banker in a city of the third class, that such private banker, has permanently invested in this state in his banking business immediately preceding the date of such affidavit, a capital of at least twenty-five thousand dollars over and above all his liabilities as such private banker; or

2. If such private banker is engaged in business as a private banker in a city of the second class, that such private banker has permanently invested in this state in his banking business immediately preceding the date of such affidavit, a capital of fifty thousand dollars over and above all his liabilities as such private banker; or

3. If such private banker is engaged in business as a private banker in a city of the first class:

(a) That such private banker has permanently invested in this state in his banking business a capital of at least one hundred thousand dollars over and above all his liabilities as such private banker, if such banker is engaged in business in such a city with a population of over one million; and at least seventy-five thousand dollars over and above all such liabilities, if such banker is engaged in business in any other such city.

(b) That such applicant will not pay or credit or advertise to pay or credit any interest or pay, credit or give any bonus or gratuity whatever or anything of value to any depositor on a deposit balance with such private banker of less than five hundred dollars, if such applicant is engaged in business in such a city with a population of over one million, or less than three hundred dollars, if engaged in business in any other such city.

(c) That the average of the separate deposits received by such private banker, since April first, nineteen hundred and fourteen, or during the twelve months immediately preceding the date of such affidavit, for safe-keeping, for transmission, or for any other purpose, exclusive of dividend checks, coupons or other small collection items collected by such private banker for customers in the ordinary course of business, is three hundred dollars or more, if such applicant is engaged in business in such a city with a population of over a million or two hundred dollars or more if engaged in business in any other such city.

Provided, however, that subdivisions b and c of this section shall not apply to certificates of deposit actually outstanding at the time this act takes effect.

After the date upon which the superintendent has accepted and filed in his office such affidavit of any private banker, and until the first day of January next succeeding, the subsequent sections of this article shall not apply to such private banker, but such banker shall be subject to the provisions of the sections of article two of this chapter applicable to such private bankers.

Every private banker who has submitted an affidavit which has been duly accepted and filed by the superintendent, and who seeks to continue or to engage in business as a private banker under the provisions of this section after the first day of January succeeding such filing by the superintendent, shall submit to the superintendent during the month of November preceding such first day of

January and annually thereafter during the same month, an affidavit containing a statement as above specified, verified as of a date within such month. In the event of the failure of such private banker so to do, or of the refusal of the superintendent to accept and file said affidavit, such private banker shall cease to transact business as a private banker until the superintendent shall have issued to him and filed in his office an authorization certificate as required by this article.

Source.—New. As to the purpose of the section, see note to § 150.

CROSS-REFERENCES.—Investigation by superintendent and refusal or acceptance of affidavit, see § 25.

Revocation of acceptance, see § 26.

Powers of superintendent over delinquent private bankers, see §§ 56-78.

§ 161. Deposit of securities with superintendent; manner of terminating surety company's liability.

Every such private banker, not hereinbefore excepted from the provisions of this section, shall transfer and assign to the superintendent of banks, registered stocks or bonds of a kind in which savings banks are required by this chapter to invest their deposits, to an amount in value equal to at least ten per centum of the total deposits held by such private banker, and in any event of the value of at least five thousand dollars, and such banker shall at all times thereafter keep on deposit with the superintendent stocks or bonds of such kind to the amount in value of ten per centum of the total deposits with such banker and not less, in any event, than five thousand dollars. Such stocks or bonds shall be registered in the name of the superintendent of banks officially as trustee for the depositors with such private banker, subject to sale and transfer and disposal of the proceeds thereof by the superintendent only upon the order of a court of competent jurisdiction after due notice to such private banker. Until the order of such court authorizing such sale or transfer or other disposition thereof, such private banker shall be entitled to receive the income from such securities unless he shall be in default to the superintendent in the payment of any assessment, penalty or forfeiture for which such private banker shall have become liable

under the provisions of this chapter. In case such banker shall have deposited with the superintendent securities to an amount in value in excess of the amount at any time required by the provisions of this section, upon due proof of such facts, such private banker shall be entitled to receive from the superintendent any such excess. The securities deposited by such banker as required by this section may be exchanged from time to time, with the approval of the superintendent, for other securities of the kind which may be deposited with the superintendent as hereinbefore provided.

At any time before the thirty-first day of July,* nineteen hundred fourteen, such private banker may deposit, or cause to be deposited, with the superintendent of banks, any securities theretofore deposited by such private banker with the comptroller under the provisions of chapter three hundred forty-eight of the laws of nineteen hundred ten as amended by chapter three hundred ninety-three of the laws of nineteen hundred eleven, and the comptroller is hereby authorized to transfer such securities to the superintendent of banks, and the superintendent is hereby authorized to receive such securities and to hold them as part of the deposit of securities required by this section for a period of one year after the thirty-first day of July, nineteen hundred fourteen, during which year other securities of the kind which may be deposited with the superintendent as hereinbefore provided shall be substituted therefor. At any time before the thirty-first day of July,* nineteen hundred fourteen, such private banker may cause any surety company, which has received from any such private banker securities to indemnify itself on account of any bond issued by it on behalf of such banker under the provisions of chapter three hundred forty-eight of the laws of nineteen hundred ten, as amended by chapter three hundred ninety-three of the laws

* The law, as originally drafted, provided in § 502 for the repeal of the then existing private banking law (Ch. 348, Laws of 1910; Ch. 343, Laws of 1911) to become effective on *August* first 1914. The legislature by amendment extended the time for such repeal to become effective to *November* first, but omitted to change *July* in the present section to *October* so as to harmonize this section with the amendment in the repealing clause. See § 152, as to legislative intent to permit business to be transacted under the former law until after *October* 31st.

of nineteen hundred eleven, to assign such securities to the superintendent of banks in trust for the depositors with such private banker, and any such surety company is hereby authorized to transfer and assign such securities to the superintendent of banks for such purpose, and in case such securities shall be so assigned and such surety company shall thereafter become liable on such bond, the sums realized from the sale of such securities or from other securities substituted for them, shall be applied in the first instance to the payment of any indebtedness of such private banker to such surety company. Such private banker shall be entitled to have any such securities so transferred by such surety company to the superintendent of banks, received by such superintendent and held by him as part of the deposit required by this section for a period of one year after the thirty-first day of July,* nineteen hundred fourteen, during which year securities must be substituted therefor in which savings banks are authorized to invest deposits received by them.

At any time after this article takes effect any private banker, who has heretofore given a bond to the comptroller pursuant to the provisions of chapter three hundred forty-eight of the laws of nineteen hundred ten, as amended by chapter three hundred ninety-three of the laws of nineteen hundred eleven, may institute a proceeding in the supreme court in the county in which said private banker's place of business is located for an order discharging the surety company from any liability under such bond. Such proceedings shall be commenced by filing a verified petition in the office of the clerk of the county in which the principal office of such banker is located, setting forth the facts relating to the giving of such bond, that such banker has complied with the provisions of this act, and has assigned, transferred or delivered to the superintendent of banks, the securities or moneys required by this section, and that an authorization certificate has been duly issued to such banker to carry on the business of private banking as herein provided. In case such banker shall request any surety company, which shall have received from any such private

* See note at bottom of preceding page.

banker indemnity of any kind as security for the execution of any bond issued by it on behalf of such banker as aforesaid, to assign and transfer any securities given to it, as such indemnity to the superintendent of banks in trust for the depositors of such private banker, for the persons delivering money for transmission to such private banker, as provided for in this section, or to assign and transfer such securities to said private banker, or his nominee, and such surety company shall refuse to make such assignment or transfer that fact may also be set forth in such petition, together with a description of such securities. Such petition shall also set forth the number of depositors of the private banker. Upon the filing of such verified petition, as aforesaid, the court may issue an order requiring the comptroller, the surety company, and the depositors of the private banker as a class, and ten specified depositors of such class, to show cause at a special term of the supreme court, at a time and place to be fixed by the court, not less than thirty days from the date of granting the order, why the bond referred to in said petition, given by such surety company on behalf of such banker, shall not be canceled and discharged, the surety company relieved from all liability thereunder and any indemnity or securities received and held by such surety company on account of such bond should not be assigned and transferred to such banker or his nominee, or to the superintendent of banks, as provided for in this section. Such order shall prescribe the manner of giving notice, which shall be by personal service of the petition and order to show cause aforesaid upon the surety company, the comptroller and the aforesaid ten specified depositors of said banker, and by the publication of such order to show cause, once a week, for four successive weeks, in two newspapers of general circulation, published in the county where said banker has his principal place of business.

Upon the return day of said order the court shall hear the application of the petitioner and all persons interested therein, and on such hearing determine any question of fact or law arising thereon or involved therein, and if upon such hearing it shall appear that said private banker has complied with all of the provisions of this article, and has received an authorization certificate

permitting such banker to carry on the private banking business under the provisions of this article and that the facts stated in said petition are true, and that proper cause has been shown for granting the prayer of said petitioner, the court shall thereupon enter an order discharging and releasing such surety company from any and all liability on any such bond, and shall direct the comptroller to surrender the same to such surety company upon the assignment and transfer to the superintendent of banks, or to such private banker or his nominee, as the case may be, of any securities held by it as indemnity as aforesaid, and upon the entry of such order and the assignment and transfer of such securities, as provided in said order, such surety company shall be discharged and released from any and all liability on any such bond.

Source.—New.

Under former article 3-a of the General Business Law (repealed by this act) each applicant for a license to do business generally as a private banker was required to deposit with the state comptroller \$10,000 in money or securities approved by the comptroller, and in addition thereto a surety company bond or money or approved securities of not less than \$5,000 and equal to twenty per centum of all deposits, *but in no event in excess of \$50,000*. Thus when the deposits of a private banker in Buffalo or Rochester reached \$200,000, he could thereby become exempted by reason of the comptroller holding his securities to the amount of \$50,000 (subd. 5, § 29d, Gen. Bus. Law, supra).

Under the present law all private bankers within this section are required to transfer savings bank securities (Cf. § 239) to the Superintendent of Banks equal in value at all times to ten per centum of total deposits and not less in value than \$5,000, *irrespective of the amount of such deposits*. See § 166 regarding total reserves which such private banker must maintain in addition to depositing the above securities with the superintendent.

CROSS-REFERENCES.—How securities held by superintendent and right to interest thereon, see § 33.

Application of interest in payment of assessments or penalties, see § 34.

Exchange of securities and withdrawal of excess, see § 35.

Examination and comparison of securities, see § 36.

Return of securities, see § 37.

Deposit of securities by banks, see § 105; by trust companies, see § 184; by domestic investment companies, see § 292; by foreign investment companies, see § 306.

CONSTITUTIONALITY.—The provisions for the cancellation of existing bonds are not unconstitutional, and a depositor with a private banker is not entitled to an injunction restraining such cancellation. *Greenspau v. Oliver*, 164 App. Div. 535.

MAY DEPOSIT BOND AND MORTGAGE.—The Superintendent of Banks is authorized to accept from the private banker as deposit of stocks or bonds with the Superintendent of Banks under the provisions of section 161 of the Banking Law a bond and mortgage of the kind in which a savings bank may invest its deposit under section 239, sub. 6 of the Banking Law. Atty.-Gen. Rep. October 30, 1914.

EFFECT OF TERMINATING SURETY COMPANY'S LIABILITY.—The termination of the surety company's liability does not affect any liability already incurred. See Gen. Constr. Law, § 93.

BONDS GIVEN UNDER LAWS 1908, CH. 479.—A liability incurred by a surety on a bond given pursuant to chapter 479 of the Laws of 1908 is not affected by subsequent legislation. *Goldberg v. People's Surety Company of New York*, 162 App. Div. 385.

Where a private banker had given a bond under Laws 1910, ch. 348, and also a bond under Laws 1907, ch. 185, as amended by Laws 1908, ch. 479, it was held that, while he was entitled to the cancellation of the bond given under the Act of 1910, he was not entitled to have the other bond cancelled, since it was not within the scope of § 161 of the Banking Law. *Matter of Kovacs*, 88 Misc. 689.

No court order is necessary to secure the return of excess securities, but the Superintendent must be satisfied from the proof offered by the applicant that the securities which are sought to be withdrawn are in excess of the amount required. *Atty.-Gen. Rep. April 24, 1915.*

A depositor who has made a deposit with a private banker cannot, under any circumstances, maintain an action against the Superintendent of Banks because of the return by him, in accordance with section 161, of securities deposited by said private banker with the Banking Department. *Atty.-Gen. Rep., July 19, 1915.*

§ 162. Investment of permanent capital and deposits; prohibitions.

Every such private banker may, subject to the limitations and restrictions contained in this article, invest his permanent capital and the deposits received by him in such real or personal securities, or real and personal property, consistent with safety and prudence of management as he may deem proper, provided the security afforded depositors is not imperiled by such investments.

No such private banker, however, shall appropriate to his own use or lend to any person or persons with whom he is associated as a partner, or invest in any business conducted by a partnership of which such private banker is a member, or lend directly or indirectly to any corporation of which he is the legal or equitable owner to the amount of twenty-five per centum or upwards of the issued capital stock of such corporation, any part of his permanent capital or of the deposits received by him.

Source.—New. The prohibitions of this section were intended to prevent the use of depositors' money in personal enterprises of the banker—a practice which has produced disastrous results to the depositors in most cases where it has been adopted.

CROSS-REFERENCES.—Superintendent may take possession if business is conducted in unsafe manner, see § 57; or may order discontinuance of unsafe practices, § 56.

§ 163. Real estate and certain securities; when to be sold.

All real estate which shall hereafter be purchased or otherwise acquired by any such private banker with his permanent capital or with money received by him on deposit or to which such private banker shall have taken title in connection with his busi-

ness as such private banker, except that upon which his office is located, shall be sold within five years after taking title thereto; and all real estate so purchased or acquired, and held by such private banker at the time when this act takes effect, except that upon which his office is located, shall be sold within five years after this act takes effect; unless upon his application the superintendent of banks shall, in either case, have extended the time within which such sale shall be made.

All such real estate and all registered securities and mortgages purchased by any such private banker with any part of his permanent capital or with money received by him on deposit, or held by any such private banker on the date when this act takes effect, shall be sold within one year after such date unless prior to the expiration of such year, such real estate or registered securities or mortgages shall have been recorded in the name of such private banker as provided in section one hundred fifty-five of this article.

Source.—New, but first paragraph adapted from former § 147 relating to savings banks. The purpose of the second paragraph is to force all capital and deposit investments within the provisions of § 155.

CROSS-REFERENCES.—Power of superintendent to extend time within which real estate must be disposed of, see § 49.

Restrictions on holding real estate in case of banks, see § 107; of trust companies see § 189; of savings banks, see § 240; of savings and loan associations, see § 387.

§ 164. Restriction on purchases of, and loans on real estate.

No such private banker shall hereafter purchase with any part of his permanent capital or deposits received by him any real estate which is subject to a mortgage, lien or encumbrance; nor make a loan, directly or indirectly, upon the security of real estate if such real estate is subject to a prior lien or encumbrance and the amount unpaid upon such prior mortgage, lien or encumbrance or the aggregate amount unpaid upon all prior mortgages, liens and encumbrances exceeds ten per centum of the permanent capital of such private banker, and, if the amount so secured, including all prior mortgages, liens and encumbrances, exceeds two-thirds of the value of such real estate.

Source.—Adapted from former § 27, subd. 3. The first clause is new.

CROSS-REFERENCES.—For restrictions on real estate loans contained in other articles of banking law, see § 108, and cross-references thereunder.

§ 165. Books and records.

Every such private banker shall keep separate and complete books of account in which shall be promptly entered the details of all business transacted by him as such banker including statements in detail of the liabilities incurred by him as such banker and of the securities or property in which the permanent capital and the deposits received by him have been invested.

Every such private banker shall conform his methods of keeping his books and records to such orders in respect thereto as shall have been made and promulgated by the superintendent pursuant to section fifty-six of this chapter. Any such banker that refuses or neglects to obey any such order shall be subject to a penalty of one hundred dollars for each day that such refusal or neglect continues.

Every such private banker shall preserve the records of final entry used in such banking business, including cards used in the card system and deposit tickets, for a period of at least six years from the date of making the same or from the date of the last entry thereon, unless the superintendent shall, upon application of such private banker, have otherwise directed.

Source.—The first and third paragraphs are new. The second is derived from former § 8.

CROSS-REFERENCES.—For similar restrictions upon other persons and corporations subject to the Banking Law, see § 109 and cross-references there given.

§ 166. Reserves against deposits.

Every such private banker shall maintain total reserves against his aggregate demand deposits, as follows:

1. Fifteen per centum of such deposits if such private banker is engaged in business as a private banker in a city of the first class.

2. Ten per centum of such deposits if such private banker is engaged in business as a private banker in any other city.

At least one-tenth of such total reserves shall consist of reserves on hand and the remainder thereof shall consist of reserves on deposit subject to call in any state bank, national banking association or trust company.

If any such private banker shall fail to maintain his total reserves in the manner required by this section, he shall be liable for, and shall pay, the assessment or assessments provided for in section thirty of this chapter.

Source.—New.

CROSS-REFERENCES.—Definitions of “aggregate demand deposits,” “reserves on hand,” “reserves on deposit” and “total reserves,” see § 3.

Assessments for encroachments on reserves, see § 30.

Reserves of banks, see § 112; of trust companies, see § 197.

As to requirement for deposit of securities with superintendent, see § 161.

§ 167. Regulations as to transmission of money; burden of proof in action based on failure to transmit.

Every such private banker shall forward to the person designated to receive the same, all moneys received for transmission within five days after the receipt thereof, unless otherwise agreed between the parties in writing. In any action against such private banker to recover money deposited for transmission with such private banker, the burden of proving the transmission to, and receipt of the money by, the person to whom such money was directed to be paid, shall be upon such private banker. In any such action, such private banker may, however, introduce in evidence his duly authenticated affidavit, or such affidavit of his duly authorized agent, setting forth the fact of the transmission of such money either to the person to whom the same was to be transmitted or to the agent or correspondent of such private banker to whom such money may have been transmitted for payment, together with a duly authenticated receipt signed by the consignee of such money; or in lieu of such receipt, together with a duly authenticated affidavit of such agent or correspondent setting forth the fact of payment. The introduction in evidence in any such action of any such documents setting forth such facts, shall constitute sufficient evidence to shift to the plaintiff the burden of proof of the facts stated therein.

Source.—Laws 1910, ch. 348, §§ 29-b, 29-c, revised.

§ 168. Private banker or agent thereof shall give proper receipt for money received for transmission.

Every such private banker and every agent of such private banker shall, whenever money is received for transmission, give to the person delivering or depositing such money for transmission, a receipt for such money or deposit in the name of such private banker with the name and address of such private banker printed thereon; and such receipt shall state the date when such money is received, the amount thereof, the name and address of the person to whom such money is to be transmitted and the date not later than which such money is to be transmitted by such private banker. Every person violating the provisions of this section shall forfeit the sum of one hundred dollars for each offense.

Source.—New.

§ 169. Monthly meetings and reports.

On or before the tenth day of each month every such private banker shall make a written statement in duplicate of all purchases and sales of property in connection with his banking business and of every discount, loan or other advance made by him, including overdrafts and renewals since the last preceding monthly statement, describing the collateral, if any, to such indebtedness as of the date upon which the statement is made. But such private banker may omit from such statement discounts, loans or advances, including overdrafts or renewals of less than one hundred dollars unless by reason of such discounts, loans or advances the liability of some individual, partnership, unincorporated association or corporation shall have been increased one hundred dollars or more since the last preceding monthly statement; such statement shall be verified by such private banker, and one duplicate shall be immediately filed in his office and on the same date the other duplicate shall be mailed in a sealed envelope, postage prepaid, addressed to the superintendent of banks at Albany.

The members of any such partnership or unincorporated association of private bankers shall on or before the tenth day of each month meet for the purpose of considering the condition and affairs of the banking business conducted by them and of making

such statement, and such statement shall be verified by each member of every such partnership or unincorporated association of private bankers except in case of disability or unavoidable absence.

Source.—New. Adapted from former § 42.

CROSS-REFERENCES.—Similar provision as to banks, see § 129; as to trust companies, see § 214; as to savings banks, see § 264; as to personal loan companies, see § 357.

§ 170. Reports required by superintendent; penalty for failure to make.

Within ten days after service upon him of the notice provided for by section forty-two of this article, every such private banker shall make a written report to the superintendent of banks, which report shall be in the form and shall contain the matters prescribed by the superintendent and shall specifically state the items of permanent capital, deposits, specie and cash items, public securities and private securities, real estate and real estate securities and such other items as may be necessary to inform the public as to his financial condition and solvency or which the superintendent may deem proper to include therein, and shall also state the amount of deposits with him, the payment of which in case of insolvency is preferred by law or otherwise over other depositors. It shall state in detail the particular assets in which the permanent capital of such private banker is invested. Every such report shall be verified by the oath of such private banker and of each member of a partnership or an unincorporated association of private bankers to the effect that the report is true and correct in all respects to the best of the knowledge and belief of such banker or bankers and that the usual business of such banker has been transacted at the location stated in the certificate required by section one hundred fifty-one of this article, and not elsewhere. In case of the disability or unavoidable absence of a member of a partnership or unincorporated association, such report may be verified by the other members; but the verification shall contain a statement of the reason for the failure of any member to sign and verify such report. After the thirty-first day of December nineteen hundred and eighteen, every such report shall within thirty days after it shall have been filed with the superintendent be

published by such private banker in one newspaper of the place where such private banker is engaged in business or if no newspaper is published there, in the newspaper published nearest to such place.

Every such private banker shall also make such other special reports to the superintendent as he may from time to time require in such form and on such dates as may be prescribed by the superintendent, which reports shall if required by the superintendent be verified in such form as he may prescribe.

If any such private banker shall fail to make any report required by this section on or before the date designated for the making thereof or shall fail to include therein any matter required by the superintendent, such private banker shall forfeit to the people of the state the sum of one hundred dollars for every day that such report shall be delayed or withheld and for every day that it shall fail to report any such omitted matter, unless the time therefor shall have been extended by the superintendent, as provided by section forty-nine of this chapter.

Source.—Adapted from former §§ 21, 22 and 24.

CROSS-REFERENCES.—Powers and duties of superintendent with regard to reports, see §§ 42, 43.

Similar provisions as to other persons and corporations doing business under the Banking Law, see § 133 and cross-references there given.

§ 171. Restrictions as to place of business.

A private banker shall not do business, or be located in the same room with, or in a room connecting with any bank, trust company, savings bank, or national banking association.

Source.—New. The purpose of this section is to prevent a repetition of conditions revealed by the suspension of Bischoff's private bank which was engaged in business in the same quarters with an incorporated bank.

Restrictions as to place of business and branch offices of savings bank, see § 245.

§ 172. Violations of this article prohibited; penalty imposed.

No individual, partnership or unincorporated association to which this chapter is applicable shall, after the thirty-first day of July,* nineteen hundred and fourteen, engage in or continue in business

* See note to § 161.

in any city as a private banker unless the superintendent of banks shall have issued an authorization certificate to him or them and shall have filed such certificate in his office, or shall have accepted and filed in his office the affidavit submitted by such private banker or bankers under the provisions of section one hundred and sixty of this article.

Any individual, partnership or unincorporated association violating the provisions of this section shall forfeit to the people of the state the sum of two hundred dollars for every day after the aforesaid date that such individual, partnership or unincorporated association shall engage in or continue in business as such private banker or bankers.

Source.— New.

Note.— The word "chapter" in the second line should read "article." The mistake came about through the fact that the definition of "private banker" in section 2 as originally drafted included the limitation now contained in § 150. When the definition was broadened to cover all private bankers the word "chapter" in § 172 should have been changed to "article."

ARTICLE V.**Trust Companies.**

- Section 180.** Incorporation; organization certificate.
181. Notice of intention to organize.
182. Submitting organization certificate for examination.
183. When corporate existence begins; conditions precedent to commencing business.
184. Deposit of securities with superintendent.
185. General powers.
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Section 219. Annual report of unclaimed deposits, dividends and interest.

220. Trust company to pay expenses incurred in its behalf by superintendent.

221. Preservation of books and records.

222. Restrictions on officers, directors and employees.

223. Prohibition against encroachments on powers.

§ 180. Incorporation; organization certificate; amount of capital stock.

When authorized by the superintendent of banks as provided by section twenty-three of this chapter, seven or more persons may form a corporation to be known as a trust company. Such persons shall subscribe and acknowledge an organization certificate in duplicate, which shall specifically state:

1. The name by which the trust company is to be known.

2. The place where its business is to be transacted.

3. The amount of its capital stock, and the number of shares into which such capital stock shall be divided, which capital stock shall amount to not less than:

(a) One hundred thousand dollars, if the place where its business is to be transacted is an incorporated or unincorporated village or city the population of which does not exceed twenty-five thousand.

(b) One hundred and fifty thousand dollars, if the place where its business is to be transacted is a city the population of which exceeds twenty-five thousand but does not exceed one hundred thousand.

(c) Two hundred thousand dollars, if the place where its business is to be transacted is a city the population of which exceeds one hundred thousand but does not exceed two hundred and fifty thousand.

(d) Five hundred thousand dollars, if the place where its business is to be transacted is a city the population of which exceeds two hundred and fifty thousand.

4. The names and places of residence of the incorporators.

5. The term of its existence, which may be perpetual.

6. A declaration that each incorporator will accept the responsibilities and faithfully discharge the duties of a director therein if elected to act as such when authorized by the provisions of this chapter.

Such certificate may provide for the manner in which the stock of the corporation may be transferred and for the number of directors necessary to constitute a quorum.

Source.—Former § 180. The minimum number of incorporators has been reduced from thirteen to seven for the purpose of providing against embarrassment in conducting trust company business that may arise from possible federal legislation against interlocking directors.

OTHER STATUTES AFFECTING TRUST COMPANIES.—Trust companies are subject to all provisions of the General Corporation Law and the Stock Corporation Law, except such as are made inapplicable expressly or by necessary implication.

Tax Law, § 27.—Reports of corporations, *post*.

183.—Exemption from tax on capital stock, *post*.

188.—Franchise tax, *post*.

190.—Credit on purchase of State bonds, *post*.

Penal Law, §§ 290, 294, 297, 298, 299, 303, 304, 305, 660, 661, 662, 664, 665, 666, 688, *post*.

CROSS-REFERENCES.—Definition of "trust company," see § 2; of "population," see § 3.

Directors, see §§ 208–216.

Similar requirements in case of other persons and corporations engaging in business under the Banking Law, see § 100 and cross-references there given.

As to qualifications of incorporators, see Gen. Corp. Law, § 4, *post*; corporate names, *id.* § 6, *post*; amended and supplemental certificates, *id.* § 7, *post*; extension of corporate existence, *id.* § 37, *post*.

Transfer of stock, see Stock Corp. Law, § 40 *et seq.*

APPROVAL OF CHANGE OF NAME.—This is governed by Gen. Corp. Law, § 60, *post*, which provides that in case of a banking corporation, the application for the change must be approved by the superintendent. This applies not only to banks, but to all corporations organized under the Banking Law. Atty.-Gen. Rep. (1900) 255; Atty.-Gen. Rep. (1902) 186.

§ 181. Notice of intention to organize; filing, publication and service upon existing banks and trust companies.

At the time of executing such organization certificate, the proposed incorporators shall sign a notice of intention to organize such trust company which shall specify their names, the name of the proposed corporation, the amount of its capital stock, and its

location as set forth in the organization certificate. The original of such notice shall be filed in the office of the superintendent of banks within sixty days after the date of execution, and a copy thereof shall be published at least once a week for four successive weeks in a newspaper designated by the superintendent as provided in section twenty of this chapter, such publication to be commenced within thirty days after such designation. A copy of such notice shall, at least fifteen days before the organization certificate is filed with the superintendent for examination, be served upon each state bank and trust company organized and doing business in the village, borough or city, if in a city not divided into boroughs, specified as the location of the proposed trust company by mailing such copy, postage prepaid, to said banks and trust companies.

Source.—Former § 181 revised. Time within which publication of notice of intention must be begun after Superintendent designates newspaper, is new, as is also the limitation of time after organization certificate is filed for examination within which notice of intention must be served upon banks and trust companies. The requirement that *banks* in the same territory shall also be served with notice is new.

CROSS-REFERENCES.—Dutes of superintendent upon receipt of notice of intention, see § 20.

Similar provision as to banks, see § 101; as to savings banks, see § 231.

§ 182. Submitting organization certificate to superintendent; proof of publication and service of notice of intention.

After the lapse of at least twenty-eight days from the date of the first due publication of the notice of intention to organize and within ten days after the date of the last publication thereof, the organization certificate, executed in duplicate, shall be submitted to the superintendent of banks at his office together with affidavits or other evidence satisfactory to him showing due publication and service of the notice of intention to organize prescribed in section one hundred eighty-one of this article.

Source.—Former §§ 180, 182, rewritten. The requirement of the lapse of at least twenty-eight days is new, the purpose being to require a publication covering four full weeks.

CROSS-REFERENCES.—See cross-references given under § 102, which is identical with this section.

§ 183. When corporate existence begins; conditions precedent to commencing business.

When the superintendent shall have endorsed his approval on the organization certificate, as provided by section twenty-three of this chapter, the corporate existence of the trust company shall begin, and it shall then have power to elect officers and transact such other business as relates to its organization. But the trust company shall transact no other business until:

1. All of its capital stock shall have been fully paid in cash and an affidavit stating that it has been so paid, subscribed and sworn to by its two principal officers shall have been filed in the clerk's office of the county in which its principal office is located and a certified copy thereof in the office of the superintendent;

2. It shall have filed in the office of the superintendent a list of its stockholders, verified by two of its principal officers, giving the name, residence, post-office address and number of shares of stock held by each stockholder;

3. It shall have made the deposit with the superintendent required by section one hundred eighty-four of this article;

4. The superintendent shall have duly issued to it the authorization certificate specified in section twenty-four of this chapter.

Source.—The provision as to when corporate existence shall begin is new. The requirement that the capital stock shall have been fully paid in cash is taken from former § 184. The requirement of an affidavit that it has been so paid comes from former § 13. The requirement as to the list of stockholders is taken from former § 185. That relating to the deposit with the superintendent is derived from former § 14. The requirement as to the authorization certificate comes from former § 32.

CROSS-REFERENCES.—Similar provisions as to other persons and corporations engaging in business under the Banking Law, see § 103 and cross-references there given.

Forfeiture of corporate rights by not commencing business, see § 485.

§ 184. Deposit of securities with superintendent.

Every trust company shall, until an order of the supreme court is obtained declaring the business of the trust company closed, keep on deposit with the superintendent of banks interest bearing stocks or bonds of the United States or of this state, or of any city, county, town, village or free school district in this state, authorized by the legislature to be issued, to the amount in value

of ten per centum of its capital stock, but not less in any case than:

1. One hundred thousand dollars, if its principal place of business is located in a city the population of which exceeds five hundred thousand;

2. Fifty thousand dollars, if its principal place of business is located in a city the population of which exceeds one hundred thousand but does not exceed five hundred thousand;

3. Thirty thousand dollars, if its principal place of business is located in a city the population of which exceeds twenty-five thousand and does not exceed one hundred thousand;

4. Twenty thousand dollars, if its principal place of business is located elsewhere in this state.

Such securities shall be registered in the name of the superintendent of banks of the state of New York in trust for the creditors of and depositors with such trust company and subject to sale and transfer, and to the disposal of the proceeds thereof by the superintendent only on the order of a court of competent jurisdiction. The trust company, so long as it shall continue solvent and comply with the laws of the state, may be permitted by the superintendent to collect the interest on the securities so deposited and from time to time to exchange such securities for others as provided by section thirty-five of this chapter, and may examine and compare such securities as provided by section thirty-six of this chapter.

Source.—Former § 14.

CROSS-REFERENCES.—Definition of "population," see § 3.

How securities held by superintendent and right to interest thereon, see § 33.

Application of interest in payment of assessments or penalties, see § 34.

Exchange of securities and withdrawal of excess, see § 35.

Examination and comparison of securities, see § 36.

Return of securities, see § 37.

Deposit of securities by other persons and corporations subject to the Banking Law, see § 105 and cross-references there given.

EFFECT OF INCREASE OF POPULATION.—Where a trust company has made the deposit required by this section and begun business, the attorney-general has ruled that it cannot thereafter be compelled to make a further deposit on the ground that the population of the city or town has so increased as to put it in a different class. Atty.-Gen. Rep. (1906) 519.

§ 185. General powers.

In addition to the powers conferred by the general and stock corporation laws, every trust company shall, subject to the restrictions and limitations contained in this article, have the following powers:

1. To act as the fiscal or transfer agent of the United States, of any state, municipality, body politic or corporation; and in such capacity to receive and disburse money, to transfer, register and countersign certificates of stock, bonds or other evidences of indebtedness, and to act as attorney in fact or agent of any person or corporation, foreign or domestic, for any lawful purpose.

2. To discount and negotiate promissory notes, drafts, bills of exchange and other evidences of debt; buy and sell exchange, coin and bullion; lend money on real or personal securities; and to receive deposits of moneys, securities or other personal property from any person or corporation upon such terms as the company shall prescribe.

3. To lease, hold, purchase and convey any and all real property necessary in the transaction of its business, or which the purposes of the corporation may require, or which it shall anywhere acquire in settlement or partial settlement of debts due the corporation by any of its debtors, or to secure such debts, or through sales under any judgment, decree or mortgage held by it.

4. To act as trustee under any mortgage or bonds issued by any municipality, body politic or corporation, foreign or domestic, and accept and execute any other municipal or corporate trust not prohibited by the laws of this state.

5. To accept trusts from and execute trusts for married women, in respect to their separate property, and to be their agent in the management of such property or to transact any business in relation thereto.

6. To act under the order or appointment of any court of competent jurisdiction as guardian, receiver or trustee of the estate of any minor, and as depositary of any moneys paid into court, whether for the benefit of any such minor or other person, corporation or party, and in any other fiduciary capacity.

To be appointed and to act under the order or appointment of any court of competent jurisdiction as trustee, guardian, receiver or committee of the estate of a lunatic, idiot, person of unsound

mind or habitual drunkard, or as receiver or committee of the property or estate of any person in insolvency or bankruptcy proceedings; to be appointed and to accept the appointment of executor of or trustee under the last will and testament, or administrator with or without the will annexed of the estate of any deceased person.

7. To take, accept and execute any and all such legal trusts, duties and powers in regard to the holding, management and disposition of any estate, real or personal, wherever located, and the rents and profits thereof, or the sale thereof, as may be granted or confided to it by any court of competent jurisdiction, or by any person, corporation, municipality or other authority and it shall be accountable to all parties in interest for the faithful discharge of every such trust, duty or power which it may so accept.

8. To take, accept and execute any and all such trusts and powers of whatever nature or description as may be conferred upon or entrusted or committed to it by any person or persons, or any body politic, corporation, domestic or foreign, or other authority by grant, assignment, transfer, devise, bequest or otherwise, or which may be entrusted or committed or transferred to it or vested in it by order of any court of competent jurisdiction, or any surrogate, and to receive, take, manage, hold and dispose of according to the terms of such trust or power any property or estate, real or personal, which may be the subject of any such trust or power.

9. To purchase, invest in and sell stocks, bills of exchange, bonds and mortgages and other securities; and when moneys or securities for moneys are borrowed or received on deposit, or for investment, the bonds or obligations of the company may be given therefor, but it shall have no right to issue bills to circulate as money.

10. To accept for payment at a future date, drafts drawn upon it by its customers and to issue letters of credit authorizing the holders thereof to draw drafts upon it or its correspondents at sight or on time, not exceeding one year.

11. To receive, upon terms and conditions to be prescribed by the company, upon deposit for safe keeping, bonds, mortgages, jewelry, plate, stocks, securities and valuable papers of any kind, and other personal property, for hire, and to let out receptacles for safe deposit of personal property.

12. To purchase and hold, for the purpose of becoming a member of a federal reserve bank, so much of the capital stock thereof as will qualify it for membership in such reserve bank, pursuant to an act of congress, approved December twenty-three, nineteen hundred and thirteen, entitled the "Federal Reserve Act;" to become a member of such federal reserve bank, and to have and exercise all powers, not in conflict with the laws of this state, which are conferred upon any such member by the federal reserve act. Such trust company and its directors, officers and stockholders shall continue to be subject, however, to all liabilities and duties imposed upon them by any law of this state and to all the provisions of this chapter relating to trust companies.

Source.—Former § 186, with the following changes: In subdivision 1 the words "attorney in fact or" have been inserted before "agent." In subdivision 2 the specific power to discount has been added and the powers of trust companies have been more closely assimilated to those conferred on banks by § 106, subd. 2. In subdivisions 3, 4 and 5 there are no substantial changes. In subdivision 6 the phrase "court of competent jurisdiction" has been substituted for "court of record" and the words "and in any other fiduciary capacity" have been added, while the second paragraph of the subdivision contains the substance of former § 186, subd. 10. In subdivision 7 there is no substantial change. In subdivision 8 the words "to receive, take, manage, hold and dispose of according to the terms of such trust or power" have been substituted for the words "to receive and take and hold." In subdivision 9 there is no change. Subdivision 10 is new, being identical with § 106, subd. 2, relating to banks. Subdivision 11 is derived from portions of former §§ 187, 188, but the power transferred to this subdivision has been extended to *all* trust companies. Subdivision 12 is new, being identical with § 106, subd. 4, relating to banks, which see.

CROSS-REFERENCES.—Powers of banks, see § 106.

Prohibition against encroachments on powers, see § 223.

Powers of corporations in general, see Gen. Corp. Law, §§ 10, 11; acquisition of real property, *id.*, §§ 13, 14.

NOW HAVE GENERAL BANKING POWERS.—In *Jenkins v. Neff*, 186 U. S. 230, affirming 163 N. Y. 320, it was held that under the former law trust companies were not authorized to do a strictly banking business, and, consequently U. S. Rev. Stat., § 5219, forbidding the taxation of National banks "at a greater rate than is assessed upon other moneyed capital in the hands of individual citizens of such state" was not violated by the provisions of the Tax Law discriminating between shares of stock of National banks and shares of stock of trust companies. It would now seem that trust companies are authorized to do a strictly banking business.

NO POWER TO GUARANTEE.—Trust companies occupy a fiduciary position and must be confined not only within the words, but within the spirit of the statutory provision which declares that a corporation shall not possess or exercise any powers not given by law, and not necessary to the exercise of the powers so given. The power given a trust company to buy and sell stocks and bonds does not include power to guarantee the sale of securities at a specific price within a specified period. Such a guarantee is an *ultra vires* act. *Gause v. Commonwealth Trust Co.*, 196 N. Y. 134, *aff'g* 124 App. Div. 438, *aff'g* 55 Misc. 110.

A trust company has no power to represent to a purchaser of bonds issued under a mortgage of which it is trustee that it is a first mortgage, or to insure the title to the mortgaged property. *Davidge v. Guardian Trust Co.*, 203 N. Y. 331, *rev'g* 136 App. Div. 78.

CANNOT ISSUE BONDS IN ADMIRALTY PROCEEDINGS.—A trust company cannot issue bonds to be filed in admiralty proceedings, since such a bond is virtually a guarantee and it is held that a trust company has no right to give a guaranty. *Atty.-Gen. Rep.* (1909) 732.

CANNOT BECOME NATIONAL BANK.—The superintendent should not authorize a trust company organized under the Banking Law to become a National bank. *Atty.-Gen. Rep.* (1906) 521.

CANNOT DO INSURANCE BUSINESS.—A trust company can not be permitted to take deposits upon an agreement to pay to the depositor's representative, in the event of his death before the expiration of a specified period, 25 per cent. in addition to the principal. This is in the nature of insurance, and can only be done by corporations organized under the insurance laws. *Atty.-Gen. Rep.* (1899) 157.

MAY DO BUSINESS ON PLAN OF SAVINGS BANK.—Section 279, prohibiting corporations other than savings banks or savings and loan associations from holding themselves out as savings banks, does not make it unlawful for a trust company to transact its business on the general plan of, or in the manner usually adopted by savings banks. *People v. Binghamton Trust Co.*, 139 N. Y. 185, *aff'g* 65 Hun 384.

SUBDIVISION 1.

WHO MAY EXERCISE POWERS.—By § 223 federal reserve banks are allowed to exercise the powers conferred by this subdivision, and domestic corporations exercising any of such powers at the time this act took effect are authorized to continue the exercise thereof.

Under the former law the Attorney-General was of the opinion that no corporation not incorporated under the Banking Law could act as transfer agent or registrar. *Atty.-Gen. Rep.* (1904) 364; *Atty.-Gen. Rep.* (1912) vol. 2, p. 187.

POWER TO ISSUE PROSPECTUS.—Under this subdivision, taken in connection with subd. 9, a trust company has power to issue a prospectus advertising for sale bonds of a corporation for which the trust company is fiscal

agent. *Kavanaugh v. Gould*, 147 App. Div. 281, overruling *Kavanaugh v. Commonwealth Trust Co.*, 64 Misc. 303.

A trust company may act as a real estate broker for one of its clients. *Atty.-Gen. Rep.*, April 17, 1916.

SUBDIVISION 2.

PROHIBITIONS AGAINST ENCROACHMENTS.—Section 223, prohibiting encroachments on the powers of trust companies, does not apply to this subdivision except as to the power to receive deposits in trust, but restrictions upon powers to discount and receive general deposits are covered by § 140.

TAKING UNAUTHORIZED COLLATERAL.—If an unauthorized security be taken, it is enforceable. *Davis Sewing Machine Co. v. Best*, 30 Hun, 638.

TO RECEIVE DEPOSITS OF MONEYS.—Banks and trust companies may accept deposits made upon condition that notice in writing may be required a specified number of days before withdrawal. Such deposits may, with the consent of the bank or trust company, be withdrawn without notice. Such action is not in violation of § 290 of the Penal Law unless it is pursuant to an agreement to that effect made at or before the time of the deposit. *Atty.-Gen. Rep.*, April 9, 1914.

SUBDIVISION 3.

DOES NOT APPLY TO INVESTMENTS OF CAPITAL.—Section 193 exclusively controls investments of capital, and, therefore, a trust company cannot invest part of its capital in a banking house to be used as its place of business. *Atty.-Gen. Rep.* (1912), vol. 2, p. 289 (disapproving contrary opinion of predecessor, *Atty.-Gen. Rep.* [1897], 159).

SUBDIVISION 4.

All other corporations are prohibited by § 223 from exercising these powers and those contained in subdivisions 5, 6, 7 and 8.

SUBDIVISION 6.

"MONEYS PAID INTO COURT."—These words held not to include bankruptcy funds deposited by receiver or trustee in bankruptcy. *Henkel v. Carnegie Trust Co.*, 213 N. Y. 185, rev'g 154 App. Div. 596.

SUBDIVISION 9.

"OR FOR INVESTMENT."—Under this subdivision a trust company has power to receive deposits for investment and issue investment certificates agreeing to repay at a certain date the money, with interest, and to hold, at all times prior to the maturity of the certificate, as security for its payment, the collateral notes in which the money is invested and the collateral by which such notes are secured. *Atty.-Gen. Rep.* (1902) 232.

SUBDIVISION 11.

Note.—The remedies given by § 331 apply exclusively to safe deposit companies and consequently these matters should be covered by contract.

§ 186. Additional powers of certain trust companies.

Every trust company which at the time this act takes effect lawfully possesses and exercises the power, for hire, to examine titles to real estate, to procure and furnish information in relation thereto, and to guarantee or insure the title to real estate to persons

interested, in such real estate or in mortgages thereon, against loss, by reason of defective title or other encumbrances of or upon, such real estate, shall continue to possess such power, but no other trust company shall hereafter have or exercise such power.

Source.—Former § 187, which gave the power to such trust companies only as had a capital of \$500,000, or over, and had their principal place of business in a county of less than 600,000 and over 300,000 inhabitants. The power to insure titles to real estate was not considered a power which trust companies should possess. The business involves highly technical knowledge and the assumption of the liability arising therefrom was not considered in furtherance of the objects for which trust companies generally are created.

§ 187. Powers of specially chartered trust companies.

Every trust company incorporated by a special law shall possess the powers of trust companies incorporated under this chapter and shall be subject to such provisions of this chapter as are not inconsistent with the special laws relating to such specially chartered company.

Source.—Former § 197.

NO NEW POWERS were given to trust companies generally by this section. *Jenkins v. Neff*, 186 U. S. 230, aff'g 163 N. Y. 520.

DEPOSITARY OF RESERVES.—Under this provision the Superintendent of Banks is entitled to designate as a depository of reserves a trust company incorporated by a special act. *Atty.-Gen. Rep.* (1900) 165.

MERGER.—By virtue of this section it was held that the Equitable Trust Co. of N. Y. and the Mercantile Trust Company, both incorporated under special acts, were entitled to merge pursuant to the provisions of former §§ 36 to 38 (new §§ 487-496). *Colby v. Equitable Trust Co.*, 124 App. Div. 262, aff'd 192 N. Y. 535.

SUBJECT TO LIQUIDATION BY SUPERINTENDENT.—A specially chartered trust company is within the provisions of §§ 57-81, relating to liquidations by the superintendent. *Atty.-Gen. Rep.* (1910) 832.

§ 188. Provisions relating to appointment of and exercise of powers as executor and in other fiduciary capacities.

1. **Executor.** When any trust company is appointed executor in any last will and testament, the court or officer authorized to grant letters testamentary in this state, shall, upon the proper application, grant letters testamentary thereon to such corporation or to its successor by merger.

2. Guardian, trustee or administrator. Any trust company may be appointed guardian, trustee or administrator, with or without the will annexed, on the application or consent of any person acting as such or entitled to such appointment and in the place and stead of such person, or such trust company may be joined with any person so acting or entitled to such appointment; but such appointments shall be made upon such notice, as is required by law, to the persons interested in the estate or fund and on the consent of such of the principal legatees or other persons interested in the estate or fund as the court, surrogate or judge making the appointment shall deem proper. No appointment so made shall be deemed to increase the number of persons entitled to full compensation beyond the number so entitled under the terms of the will or deed creating the trust or appointing a guardian or authorized by law. Whenever a person is joined with such trust company in any appointment as guardian, trustee or administrator with or without the will annexed, his appointment may be under such limitation of powers and upon such terms and conditions as to deposit of assets by such person, with such trust company, or otherwise, and upon such reduced bond or security to be given by such person, as the court, surrogate or judge, making the appointment, shall prescribe.

When application is made to any court or officer having authority to grant letters of administration with the will annexed upon the estate of any deceased person, and there is no person entitled to such letters who is qualified, competent, willing and able to accept such administration, such court or officer may at the request of any party interested in the estate, grant such letters of administration with the will annexed, to any such corporation.

Any court or officer having authority to grant letters of guardianship of any infant may upon the same application as is required by law for the appointment of a guardian for such infant, appoint any such corporation as the guardian of the estate of such infant.

3. Committee of lunatic, et cetera. Any court having jurisdiction to appoint a trustee, guardian, receiver or committee of the estate of a lunatic, idiot or habitual drunkard, or to make any fiduciary appointment, may appoint any such corporation to be such trustee, guardian, receiver or committee, or to act in any other fiduciary capacity.

4. Receiver, trustee or committee. Any court, having jurisdiction to appoint a committee or trustee or a receiver in insolvency or bankruptcy proceedings or in any other proceeding, or action, under state or federal law, may appoint any such corporation to be such receiver, trustee or committee.

5. Depositary for moneys paid into court. All moneys brought into court by order or judgment of any court of record of this state, or of any other state or of the United States, may be deposited with any such corporation that has been designated a depositary by the comptroller of the state of New York, as provided by the code of civil procedure. Whenever any such corporation shall be designated by the comptroller as a depositary for funds and moneys paid into court, it shall give to the people of the state a bond in the form and manner prescribed in this chapter.

6. Bonds. No bond or other security, except as hereinafter provided, shall be required from any such corporation for or in respect to any trust, nor when appointed executor, administrator, guardian, trustee, receiver, committee or depositary or in any other fiduciary capacity. The court, or officer making such appointment may, upon proper application, require any corporation, which shall have been so appointed, to give such security as to the court or officer shall seem proper, or upon failure of such corporation to give security as required, may remove such corporation from and revoke such appointment.

7. Investments. All investments of money received by any such corporation, and by any trust company chartered by special act, prior to May eighteen, eighteen hundred and ninety-two, as executor, administrator, guardian, personal or testamentary trustee, receiver, committee or depositary, shall be at its sole risk, and for all losses of such money the capital stock, property and effects of the corporation shall be absolutely liable, unless the investments are such as are proper when made by an individual acting as trustee, executor, administrator, guardian, receiver, committee, depositary, or such as are permitted in and by the instrument or words creating or defining the trust.

8. Preference. If dissolved by the legislature or the court, or otherwise, or liquidated by the superintendent of banks or otherwise, the debts from such corporation as guardian, trustee, executor, administrator, committee or depositary, shall be entitled to priority

of payment from the assets of such corporation on an equality with any other priority given by this chapter.

9. Court orders, accounts. Such court or officer may make orders respecting such trusts and require any trust company to render all accounts, which such court or officer might lawfully require if such executor, administrator, guardian, trustee, receiver, committee, depository or such trust company acting in any other fiduciary capacity, were a natural person.

10. No official oath required. Upon the appointment of such trust company as such executor, administrator, guardian, trustee, receiver or committee, no official oath shall be required.

11. Interest. On all sums of money not less than one hundred dollars, which shall be collected and received by a trust company acting as executor, administrator, guardian, trustee, receiver or committee under the appointment of any court or officer, or in any fiduciary capacity under such appointment, or as a depository of moneys paid into court, interest shall be allowed by such trust company at not less than the rate of two per centum per annum until the moneys so received shall be duly expended or distributed. If such interest moneys, or any part thereof, shall not annually be expended or distributed pursuant to the terms or provisions of the trust under which such moneys are held, the amount thereof not so expended or distributed shall be accumulated by such trust company for the benefit of the parties interested in such trust fund, and shall be added to the principal to constitute a new principal upon which interest shall thereafter be computed.

Source.—Subdivision 1 is from former § 189. The words “or to its successor by merger” have been added to incorporate the rule laid down in *Matter of Bergdorf* 206 N Y. 309.

The first paragraph or subdivision 2 is from former § 187 and the last two paragraphs are from former § 189. There are no substantial changes.

Subdivision 3 is from former § 189 without change.

Subdivision 4 is new, its purpose being to supplement § 185, subs. 6, 7 and 8.

The first sentence of subdivision 5 is from former § 189. The words “of this state or of any other state or of the United States” are new, as are the words “a depository” after the word “designated.” The second sentence of this subdivision is from former § 190 with the omission of the words “before receiving any such deposit” after the words “paid into court.”

Subdivision 6 is from former § 190. The words “or in any other fiduciary

capacity" are new. The word "hereinafter" in the first line should be "in this section," as it refers not only to the subsequent matter in this subdivision but also to the matter in subdivision 5, which in former § 190 came after the matter contained in this subdivision.

Subdivision 7 is from former § 190. The words "personal or testamentary trustee" have been added. Instead of "such as are proper" the old language was "such as the courts recognize as proper."

Subdivision 8 is from former § 190. The words "or liquidated by the superintendent of banks or otherwise" are new. The words "shall be entitled to priority of payment from the assets of such corporation on an equality with any other priority given by this chapter" have been substituted for the words "shall have the preference."

Subdivision 9 is from former § 190. The words "or such trust company acting in any other fiduciary capacity" are new.

Subdivision 10 is from former § 191 without substantial change.

Subdivision 11 is from former § 194 without substantial change.

EXECUTOR.—Power of foreign trust company to act as executor, see § 223.

DEPOSITARY FOR MONEYS PAID INTO COURT.—The words "any court of record" do not include bankruptcy courts. *Henkel v. Carnegie Trust Co.*, 213 N. Y. 185, rev'g 154 App. Div. 596.

Restriction on power to receive deposits of funds paid into court, see § 192.

How accounts of such deposits to be kept, see § 194, subd. 5.

Supervision of court funds, see County Law, § 240; State Finance Law, § 4.

INVESTMENTS.—Authorized investments of savings banks, see § 239.

Authorized investments of trust funds generally, see Personal Prop. Law, § 21.

It should be noted that the following provision, contained in former § 293, has been omitted: "The moneys received by any such corporation in trust may be invested in its discretion in the securities of the kind in which its capital is required to be invested, or in the stocks or bonds of any state of the United States, or in such real or personal securities as it may deem proper."

The trust company incurs no liability for investments authorized by Laws 1902, ch. 295, that is, such investments as savings banks are authorized to make, and bonds and mortgages on unencumbered real estate worth 50 per cent. more than the amount loaned thereon. For investments other than those authorized by the above mentioned statute, and such others as are permitted in and by the instrument or words creating or defining the trust, the trust company is contingently liable. *Atty.-Gen. Rep. (1905) 442*. See also *Atty.-Gen. Rep. (1906) 517*.

PREFERENCE.—As to other priorities under the Banking Law, see § 78 and the cross-references there given.

The preference given to trust funds includes such deposits only as are made pursuant to orders of court. *Madison Trust Co. v. Carnegie Trust Co.*, — App. Div. — (*Law Journal*, April 12, 1915).

A deposit by a receiver or trustee in bankruptcy under order of the bankruptcy court is not entitled to preference under this section. *Henkel v. Carnegie Trust Co.*, 213 N. Y. 185, rev'g 154 App. Div. 596.

Whether a deposit of bankruptcy funds is entitled to preference is a question for the state courts and cannot be determined on motion in a bankruptcy court. *In re Bologh*, 185 Fed. 825.

State funds on deposit with an insolvent trust company are entitled to preference. This right arises, not from this section, but from Const. 1894, Art. 1, § 16, by virtue of which the state succeeds to the right which the King had at common law to preference in payment of debts due from an insolvent. *Matter of Carnegie Trust Co.*, 206 N. Y. 390.

Municipal funds are not entitled to preference. *Matter of Northern Bank*, 85 Misc. 594, aff'd 163 App. Div. 974 and 212 N. Y. 608.

Where, upon the insolvency of a trust company, a surety on a bond given by the trust company to secure a deposit which is entitled to a preference pays to the Comptroller the amount of the deposit, such surety becomes subrogated to the preference given by this subdivision. But such preference does not extend to the accrued interest on the sum so paid. *United States Fidelity & Guaranty Co. v. Carnegie Trust Co.*, 161 App. Div. 429, aff'd 213 N. Y. 629; *Same v. Same*, 161 App. Div. 435, aff'd 213 N. Y. 629; *United States Fidelity & Guaranty Co. v. Borough Bank*, 161 App. Div. 479, aff'd 213 N. Y. 628.

§ 189. Restrictions on taking and holding real estate.

All real estate purchased by any trust company or taken by it in settlement of debts due it, shall be conveyed to it directly by name and the conveyance immediately recorded, in the office of the proper recording officer of the county in which such real estate is located.

Every parcel of real estate purchased or acquired by any trust company shall be sold by it within five years of the date on which it shall have been acquired unless:

1. There shall be a building thereon occupied by it as an office;
or

2. The superintendent of banks, on application of its board of directors, shall have extended the time within which such sale shall be made.

Source.—New. The section is identical with § 107, relating to banks. See the annotations to that section.

§ 190. Restrictions on loans, purchases of securities and total liabilities to trust company of any one person.

A trust company subject to the provisions of this article

1. Shall not directly or indirectly lend to any individual, partnership, unincorporated association, corporation or body politic,

an amount which, including therein any extension of credit to such individual, partnership, unincorporated association, corporation or body politic, by means of letters of credit or by acceptances of drafts for, or the discount or purchase of the notes, bills of exchange or other obligations of, such individual, partnership, unincorporated association, corporation or body politic, will exceed one-tenth part of the capital stock and surplus of such trust company, with the following exceptions:

(a) The restrictions in this subdivision shall not apply to loans to, or investments in the interest bearing obligations of, the United States, this state or any city, county, town or village of this state.

(b) If such trust company is located in a borough having a population of two millions or over, the total liability to such trust company, of any state other than the state of New York, or of any foreign nation, or of a municipal or railroad corporation, or of a corporation subject to the jurisdiction of a public service commission of this state, may equal but not exceed twenty-five per centum of the capital and surplus of such trust company; and the total liabilities to such trust company of any individual, partnership, unincorporated association, or of any other corporation or body politic, may equal but not exceed twenty-five per centum of the capital and surplus of such trust company, provided such liabilities are upon drafts or bills of exchange drawn in good faith against actually existing values, or upon commercial or business paper actually owned by the person negotiating the same to such trust company, and are endorsed by such person without limitation, or provided such liabilities in excess of ten per centum of such capital and surplus, and not in excess of an additional fifteen per centum of such capital and surplus, are secured by collateral having an ascertained market value of at least fifteen per centum more than the amount of the liabilities so secured.

(c) If such trust company is located elsewhere in the state, the total liability to such trust company of any state other than the state of New York, or of any foreign nation, or of a municipal or railroad corporation, or of a corporation subject to the jurisdiction of a public service commission of this state, may equal but not exceed forty per centum of the capital and surplus of such trust company; and the total liabilities to such trust company of any individual, partnership, unincorporated association, or of any

other corporation or body politic, may equal but not exceed forty per centum of the capital and surplus of such trust company, provided such liabilities are upon drafts or bills of exchange drawn in good faith against actually existing values or upon commercial or business paper actually owned by the person negotiating the same to such trust company, and are endorsed by such person without limitation, or provided such liabilities in excess of ten per centum of such capital and surplus, and not in excess of an additional thirty per centum of such capital and surplus, are secured by collateral having an ascertained market value of at least fifteen per centum more than the amount of the liabilities so secured.

(d) In computing the total liabilities of any individual to a trust company there shall be included all liabilities to the trust company of any partnership or unincorporated association of which he is a member, and any loans made for his benefit or for the benefit of such partnership or association; of any partnership or unincorporated association to a trust company there shall be included all liabilities of its individual members and all loans made for the benefit of such partnership or unincorporated association or any member thereof; and of any corporation to a trust company there shall be included all loans made for the benefit of the corporation.

This subdivision shall not be construed to render unlawful the continued holding of any securities heretofore lawfully acquired.

2. Shall not make any loans secured by the stock of another moneyed corporation if by the making of such loan the total stock of such other moneyed corporation owned and held as collateral security by it will exceed ten per centum of the total capital stock of such other moneyed corporation.

3. Shall not make any loan upon the securities of one or more corporations the payment of which loan is undertaken in whole or in part severally, but not jointly, by two or more individuals, firms or corporations:

(a) if the prospective borrowers or underwriters be obligated absolutely or contingently to purchase the securities, or any of them, collateral to the proposed loan, unless they shall have paid on account of the purchase of such securities an amount in cash or its equivalent equal to at least twenty-five per centum of the

several amounts for which they remain obligated in completing the purchase;

(b) if the trust company considering the making of the loan be liable directly, indirectly or contingently, for the repayment of the proposed loan or any part thereof;

(c) if the term of the proposed loan, including any renewal thereof, by agreement, express or implied, exceeds the period of one year;

(d) if the amount, under any circumstances, exceeds twenty-five per centum of the capital and surplus of the trust company.

4. Shall not make a loan, directly or indirectly, upon the security of real estate upon which there is a prior mortgage, lien or incumbrance, if the amount unpaid upon such prior mortgage, lien or incumbrance, or the aggregate amount unpaid upon all prior mortgages, liens and incumbrances exceeds ten per centum of the capital and surplus of such trust company, or if the amount so secured, including all prior mortgages, liens and incumbrances shall exceed two-thirds of the appraised value of such real estate as found by a committee of the directors of such trust company; but this provision shall not prevent the acceptance of any such real estate securities to secure the payment of a debt previously contracted in good faith. Every mortgage and every assignment of a mortgage taken or held by such trust company shall immediately be recorded in the office of the clerk or the proper recording officer of the county in which the real estate described in the mortgage is located.

5. Shall not, nor shall any of its directors, officers, agents or servants, directly or indirectly, purchase or be interested in the purchase of any promissory note or other evidence of debt issued by it, for less than its face value. Every trust company or person violating the provisions of this subdivision shall forfeit to the people of the state three times the face value of the note or other evidence of debt so purchased.

6. Shall not make any loan or discount on the security of the shares of its own capital stock, or be the purchaser or holder of any such shares, unless such security or purchase shall be necessary to prevent loss upon a debt previously contracted in good faith, and stock so purchased or acquired shall be sold at public or private sale, or otherwise disposed of, within six months from

the time of its purchase or acquisition. Any trust company violating any of the provisions of this subdivision shall forfeit to the people of the state twice the amount of the loan or purchase.

7. Shall not knowingly lend, directly or indirectly, any money or property for the purpose of enabling any person to pay for or hold shares of its stock, unless the loan is made upon security having an ascertained or market value of at least fifteen per centum more than the amount of the loan. Any trust company violating the provisions of this subdivision shall forfeit to the people of the state twice the amount of the loan.

8. Shall not, nor shall any officer thereof, lend directly or indirectly any sum of money to any officer, director, clerk or employee of the trust company without the written approval of a majority of the board of directors thereof filed in the office of the trust company or embodied in a resolution adopted by a majority vote of such board, exclusive of the director to whom the loan is made, or in any event, to any officer thereof, if such trust company is located in a city of the first class; and if such officer, director, clerk or employee shall own or control a majority of the stock of any other corporation a loan to that corporation shall be considered for the purpose of this subdivision as a loan to him. Every trust company or officer thereof violating this provision shall, for each offense, forfeit to the people of the state twice the amount lent.

9. Shall not, directly or indirectly, make any loan exceeding in amount one-tenth of its capital stock to any director thereof.

10. Shall not invest or keep invested in the stock of any private corporation an amount in excess of ten per centum of the capital and surplus of such trust company; nor shall it purchase or continue to hold stock of another moneyed corporation if by such purchase or continued investment the total stock of such other moneyed corporation owned and held by it as collateral will exceed ten per centum of the stock of such other moneyed corporation, provided, however, that this limitation shall not apply to the ownership of the capital stock of a safe deposit company the vaults of which are connected with or adjacent to an office of such trust company.

Source.—Former § 27, except subdivision 9 which comes from former § 186, subd. 11, and subdivision 10 which comes from former § 193. With

the exception of the last two subdivisions the section is practically identical with § 108 relating to banks. See the annotations to that section.

CROSS-REFERENCES.—Restrictions on officers, directors and employees, see § 222.

For authorities bearing upon subdivisions 1-8, see annotations to § 108.

LOANS TO OFFICERS OR DIRECTORS.—The prohibition against loans of more than one-tenth of capital to any director or officer "directly or indirectly," is not limited to a director or officer borrowing in his own name. It includes loans to a partnership of which a director is a member. The prohibition extends to the board of directors and to each director, separately or individually. *People v. Knapp*, 206 N. Y. 373, aff'g 147 App. Div. 436; Atty.-Gen. Rep (1898) 256.

A loan to a firm of which a director is a member in excess of 1/10 of capital is a violation notwithstanding the loan is amply secured and the said director had nothing whatever to do with it, and that it was made in regular course of business without reference to the director of the trust company who was a member of the firm. Atty.-Gen. Rep (1906) 498.

The prohibition applies to the purchase from an officer or director (or his firm) of notes of third persons endorsed *with recourse* by such officer or director or firm; otherwise, if the endorsement be "without recourse." Atty.-Gen. Rep. (1909) 724.

The purchase of a note, the maker of which receives the benefit, not regarded as a loan to a director merely because director liable as accommodation endorser, or as accommodation surety or guarantor. Atty.-Gen. Rep. (1909) 724.

Opinion that loan of more than 10 per cent. of capital to firm of which director a member is not *invalid* merely on that account. Atty.-Gen. Rep. (1906) 518.

POWER TO HOLD STOCK OF PRIVATE CORPORATION.—Opinion that "market value" of the stock held is immaterial; that the restriction is against the investment of more than 10 per cent. of the trust company's capital in the stock of a particular corporation, no matter what the *market* value of the stock invested in. Atty.-Gen. Rep. (1903) 410.

PURCHASES OF OWN STOCK.—An exception to the restriction contained in subdivision 6 exists in § 496 which permits a corporation to purchase the stock of dissenting stockholders in case of merger.

§ 191. Restrictions on power to contract or to accept or execute trusts.

No trust company shall have any right or power to make any contract, or to accept or execute any trust whatever, which it would not be lawful for any individual to make, accept or execute.

Source.—Former § 186, subd. 11.

§ 192. Restriction on power to receive deposits of funds paid into court.

No trust company shall receive funds and moneys paid or brought into a court of the state of New York except it be designated by the comptroller of the state of New York a depository of moneys paid into court. Nothing in this chapter contained shall, however, be deemed to preclude the deposit, in any trust company organized under the laws of this state, of any funds pursuant to the order or direction of a court of any other state or of the United States making such trust company a depository of such funds.

Source.—Former § 186, subd. 11.

CROSS-REFERENCES.—Power to receive deposits of funds paid into court, see § 188, subd. 5.

How accounts of such deposits to be kept, see § 194, subd. 5.

§ 193. Restrictions on investments of capital; how valued.

The capital of every trust company shall be invested in bonds and mortgages on real property in this state otherwise unencumbered, not exceeding sixty per centum of the value thereof, or in the stocks, bonds or other obligations of this state, or of the United States, or of any county or incorporated city of this state, duly authorized by law to be issued.

Stocks or bonds constituting a part of the lawful investment of capital of any such corporation shall not be valued upon its books or entered in its reports to the superintendent of banks at a higher price or value than their investment value as determined by amortization, after providing in a manner approved by the superintendent of banks for the gradual extinction of premiums or discounts on all such securities so as to bring them to par at maturity.

Source.—Former § 193.

CROSS-REFERENCE.—General power to invest, see § 185.

CANNOT INVEST CAPITAL IN REAL ESTATE.—Opinion that this section exclusively controls investments of *capital*, and consequently a trust company cannot invest part of its capital in banking house to be used as its place of business. (Disapproving Atty.-Gen. Rep. [1897], 159.); Atty.-Gen. Rep. (1912) vol. 2, p. 289.

MAY NOT HYPOTHECATE CAPITAL SECURITIES.—Opinion that trust company may not hypothecate securities representing *capital* investment, but must retain physical possession thereof. Atty.-Gen. Rep. (1907) 481.

§ 194. Restrictions as to entries in books; amortization of securities.

1. No trust company shall by any system of accounting or any device of bookkeeping, directly or indirectly enter any of its assets upon its books in the name of any other individual, partnership, unincorporated association or corporation, or under any title or designation that is not truly descriptive thereof.

2. The stocks, bonds and other interest-bearing corporate securities purchased by a trust company shall be entered on its books at the actual cost thereof, and for the purpose of calculating the undivided profits applicable to the payment of dividends, such stocks and securities shall not be estimated at a valuation exceeding their present cost as determined by amortization, that is, by deducting from the cost of any such stock or security purchased for a sum in excess of the amount payable thereon at maturity, and charging to profit and loss, a sufficient sum to bring it to par at maturity, or adding to the cost of any such stock or security purchased at less than the amount payable thereon at maturity, and crediting to profit and loss, a sufficient sum to bring it to par at maturity; but nothing herein contained shall prevent a trust company from carrying such stocks, bonds and other interest-bearing corporate securities on its books at their market value.

3. No trust company shall, except with the written approval of the superintendent, enter or at any time carry on its books the real estate and the building or buildings thereon, used by it as its place or places of business, at a valuation exceeding their actual cost to such trust company.

4. Every trust company shall conform its methods of keeping its books and records to such orders in respect thereto as shall have been made and promulgated by the superintendent pursuant to section fifty-six of this chapter. Any trust company that refuses or neglects to obey such order shall be subject to a penalty of one hundred dollars for each day it so refuses or neglects.

5. Every trust company holding any funds or money paid into court shall keep a book or books in which it shall make an exact account thereof. Such book or books shall state the name of the court, the title of the case, the date of receipt, from whom received, the amount of money, if any, and a description of the securities or other property received, if any, and each addition

of interest; also the date and description of each order for payment and the dates and amounts of payments thereunder and to whom paid; also an account of each change of investment, if any.

Source.—This section is identical with § 109 relating to banks, see the annotations to the latter section.

CROSS REFERENCES.—Power to receive deposits of funds paid into court, see § 188, subd. 5.

Restriction on power to receive such funds, see § 192.

§ 195. Restrictions on branch offices; penalty for violation.

No trust company or any officer or director thereof, shall transact its usual business at any place other than its principal place of business, except that a trust company may open and occupy in the city in which its principal place of business is located one or more branch offices, provided that before any such branch or branches shall be opened or occupied:

1. The superintendent shall have given his written approval, as provided in section fifty-one of this chapter;

2. The actual paid in capital of such trust company shall exceed by the sum of one hundred thousand dollars the amount required by section one hundred and eighty of this article for each branch opened.

Any trust company having a combined capital and surplus of one million dollars or over may with the written approval of the superintendent open and occupy a branch office or branch offices in one or more places located without the state of New York, either in the United States of America or in foreign countries.

Source.—Former § 186, subd. 11. This section is substantially identical with § 110, relating to banks. See the annotations to that section.

CROSS-REFERENCES.—Powers of duties of superintendent with regard to branch offices, see § 51.

Similar provisions as to other corporations subject to the Banking Law, see § 110 and cross-reference there given.

ONLY WHERE PRINCIPAL PLACE OF BUSINESS LOCATED.—A trust company cannot establish a branch office in a city of this state not included in its charter or certificate of incorporation as the place where its business is to be transacted. Op. Atty.-Gen., April 17, 1914.

§ 196. Restrictions on deposit of trust company's funds.

No trust company shall deposit any of its funds with any other moneyed corporation unless the latter has been designated as a depository for the trust company's funds by vote of a majority of the directors of the trust company exclusive of any director who is an officer, director or trustee of the depository so designated.

Source.—Form § 27, subd. 5. The section is identical with § 111 relating to banks. See the annotations to that section.

§ 197. Reserves against deposits.

Every trust company shall maintain total reserves against aggregate demand deposits, as follows:

1. Fifteen per centum of such deposits if such trust company has an office in a borough having a population of two millions or over; and at least ten per centum of such deposits shall be maintained as reserves on hand.

2. Thirteen per centum of such deposits, if such trust company is located in a borough having a population of one million or over and less than two millions, and has not an office in a borough specified in subdivision one of this section; and at least eight per centum of such deposits shall be maintained as reserves on hand.

3. Ten per centum of such deposits, if such trust company is located elsewhere in the state. Trust companies located in cities of the first and second class but not falling within subdivisions one or two of this section, shall maintain at least four per centum of such deposits as reserves on hand; and trust companies located in cities of the third class and in incorporated and unincorporated villages, shall maintain at least three per centum of such deposits as reserves on hand.

At least one-half of the reserves on hand shall consist of gold, gold bullion, gold coin, United States gold certificates or United States notes; and the remainder shall consist of any form of currency, other than federal reserve notes, authorized by the laws of the United States.

If any trust company shall have become a member of a federal reserve bank, it may maintain as reserves on deposit with such federal reserve bank such portion of its total reserves as shall be required of members of such federal reserve bank.

If any trust company shall fail to maintain its total reserves in the manner authorized by this section, it shall be liable to, and shall pay the assessment or assessments provided for in section thirty of this chapter.

Source.—Former § 198. The language is new and the reserve requirements have been somewhat reduced. The argument which influenced the Commission in consenting to such reductions was that the deposit of securities with the superintendent, required by § 184, gave additional protection to depositors.

The following table shows the changes in the percentages of aggregate demand deposits which must be retained as total reserves and reserves on hand:

	Old Law		New Law	
	Total reserves	On hand	Total reserves	On hand
Manhattan	15	15	15	10
Brooklyn	15	10	13	8
Other boroughs	15	10	10	4
Other first class cities.....	10	5	10	4
Second class cities.....	10	5	10	4
Elsewhere	10	3	10	3

Brooklyn trust companies that have branches in Manhattan are subject to the same requirements as Manhattan trust companies.

Aggregate demand deposits are not arrived at by exactly the same calculation as under the old law. See § 3, note on definition of "aggregate demand deposits."

It should be noted that under the old law the reserves on hand could consist of silver certificates or National bank notes, whereas the new law requires at least one-half of the reserves on hand to consist of "gold, gold bullion, gold coin, United States gold certificates or United States notes."

CROSS-REFERENCES.—Definitions of "aggregate demand deposits," "reserves on hand," "reserves on deposit," "total reserves," "reserve depositary" and "population," see § 3.

Assessments for encroachments on reserves, see § 30.

Designation of reserve depositaries, see § 38.

Similar provision as to banks, see § 112, as to private bankers, see § 166.

§ 198. Deposits of minors and trust deposits and deposits in the names of more than one person.

When any deposit shall be made by or in the name of any minor, the same shall be held for the exclusive right and benefit of such minor, and free from the control or lien of all other persons, except creditors, and shall be paid, together with the interest thereon to the person in whose name the deposit shall have been made, and the receipt or acquittance of such minor shall be a valid and sufficient release and discharge for such deposit or any part thereof to the corporation. When any deposit shall be made by any person describing himself in making such deposit as trustee for another and no other or further notice of the existence and terms of a legal and valid trust than such description shall have been given in writing to the company in the event of the death of the person so described as trustee, such deposit or any part thereof, together with the dividends or interest thereon, may be

paid to the person for whom the deposit was thus stated to have been made. When a deposit shall have been made by any person in the name of such depositor and another person and in form to be paid to either, or the survivor of them, such deposit thereupon and any additions thereto made, by either of such persons, upon the making thereof, shall become the property of such persons as joint tenants, and the same, together with all interest thereon, shall be held for the exclusive use of the persons so named, and may be paid to either during the life time of both, or to the survivor after the death of one of them; and such payment and the receipt or acquittance of the one to whom such payment is made, shall be a valid and sufficient release and discharge to said company, for all payments made on account of such deposit prior to the receipt by said company of notice in writing signed by any one of such joint tenants, not to pay such deposit in accordance with the terms thereof.

Source.—The first two sentences are from former § 192. The remainder is taken from former § 144, relating to savings banks.

CROSS-REFERENCES.—Similar provision as to banks, see § 148; as to savings banks, see § 249. See the annotations to last cited section.

§ 199. Interpleader in certain actions; costs.

1. In all actions against any trust company to recover for moneys on deposit therewith, if there be any person or persons, not parties to the action, who claim the same fund, the court in which the action is pending, may, on the petition of such trust company, and upon eight days' notice to the plaintiff and such claimants, and without proof as to the merits of the claim, make an order amending the proceedings in the action by making such claimants parties defendant thereto; and the court shall thereupon proceed to determine the rights and interests of the several parties to the action in and to such funds. The remedy provided in this section shall be in addition to and not exclusive of that provided in section eight hundred and twenty of the code of civil procedure.

2. The funds on deposit which are the subject of such action may remain with such trust company to the credit of the action until final judgment therein, and be entitled to the same interest as other deposits of the same class, and shall be paid by such trust

company in accordance with the final judgment of the court; or the deposit in controversy may be paid into court to await the final determination of the action; and when the deposit is so paid into court the trust company shall be struck out as a party to the action, and its liability for such deposit shall cease.

3. The costs in all actions against a trust company to recover deposits shall be in the discretion of the court, and may be charged upon the fund affected by the action.

Source.—This section is taken from former § 145 relating to savings banks.

CROSS-REFERENCES.—Similar provision as to banks, see § 113; as to savings banks, see § 250. See the annotations to last cited section.

§ 200. Rate of interest; effect of usury.

Every trust company may take, receive, reserve and charge on every loan and discount made, or upon any note, bill of exchange or other evidence of debt, interest at the rate of six per centum per annum; and such interest may be taken in advance, reckoning the days for which the note, bill or evidence of debt has to run. The knowingly taking, receiving, reserving or charging a greater rate of interest shall be held and adjudged a forfeiture of the entire interest which the note, bill of exchange or other evidence of debt carries with it, or which has been agreed to be paid thereon. If a greater rate of interest has been paid, the person paying the same or his legal representatives may recover twice the entire amount of the interest thus paid from the trust company taking or receiving the same, if such action is brought within two years from the time the excess of interest is taken. The purchase, discount or sale of a bona fide bill of exchange, note or other evidence of debt payable at another place than the place of such purchase, discount or sale at not more than the current rate of exchange for sight draft, or a reasonable charge for the collection of the same, in addition to the interest, shall not be considered as taking or receiving a greater rate of interest than six per centum per annum. The true intent and meaning of this section is to place and continue such trust companies on an equality in the particulars herein referred to with the national banks organized under the act of congress entitled "An act to provide a national currency, secured by pledges of United States bonds, and to provide for the circula-

tion and redemption thereof," approved June the third, eighteen hundred and sixty-four.

Source.—Former § 74 relating to banks, applied to trust companies by former § 186, subd. 11.

CROSS-REFERENCES.—For identical section relating to banks, see § 114 and the annotations thereto.

§ 201. Interest on collateral demand loans of not less than five thousand dollars.

Upon advances of money repayable on demand to an amount not less than five thousand dollars made upon warehouse receipts, bills of lading, certificates of stock, certificates of deposit, bills of exchange, bonds or other negotiable instruments, pledged as collateral security for such repayment, any trust company may receive or contract to receive and collect as compensation for making such advances any sum which may be agreed upon by the parties to such transaction.

Source.—Former § 75 relating to banks, applied to trust companies by former § 186, subd. 11.

CROSS-REFERENCES.—For identical section relating to banks, see § 115 and the annotations thereto.

§ 202. Calculation of earnings for dividend period.

To determine the amount of gross earnings of a trust company for any dividend period the following items may be included:

1. All earnings actually received during such period, less interest accrued and unpaid included in the last previous calculation of earnings;
2. Interest accrued and unpaid upon debts owing to it secured by collateral as authorized by this article upon which no default of more than one year exists and upon corporate stocks, bonds, or other interest-bearing obligations owned by it upon which no default exists;
3. The sums added to the cost of securities purchased for less than par as a result of amortization, provided the market value of such securities is at least equal to their present cost as determined by amortization;
4. Any profits actually received during such period from the sale of securities, real estate or other property owned by it;

5. Sums recovered on items previously charged off, and any amounts allowed by the superintendent on account of assets previously disallowed and charged off.

6. Provided the superintendent of banks shall have approved, and only to the extent of such approval, any increase in the book value of an office building owned by it, which building or a portion thereof is used by it as a place of business.

To determine the amount of net earnings for such dividend period the following items shall be deducted from gross earnings:

1. All expenses paid or incurred, both ordinary and extraordinary, in the transaction of its business, the collection of its debts, and the management of its affairs, less expenses incurred and interest accrued upon its debts deducted at the last previous calculation of net earnings for dividend purposes;

2. Interest paid, or accrued and unpaid, upon debts owing by it;

3. The amounts deducted through amortization from the cost of corporate stocks, bonds or other interest-bearing obligations purchased above par in order to bring them to par at maturity;

4. All losses sustained by it. In the computation of such losses all debts owing to it shall be included upon which no interest shall have been paid for more than two years or on which a judgment has been recovered which shall have remained unsatisfied for two years; and such other assets as shall have been disallowed by the superintendent of banks, or by its board of directors.

The balance thus obtained shall constitute the net earnings of such trust company for such period.

Source.—Former § 28. The section is identical with § 116 relating to banks. See the annotations to the latter section.

§ 203. Surplus fund; of what composed, and for what purposes used.

Every trust company shall create a fund to be known as a surplus fund. Such fund may be created or increased by contributions, by transfers from undivided profits, or from net earnings. Such fund shall up to twenty per centum of the capital of the trust company be used only for the payment of losses in excess of undivided profits.

Source.—Former § 27, subd. 10. The section is identical with § 117 relating to banks. See the annotations to the latter section.

§ 204. How net earnings credited for dividend purposes; credits to surplus fund and to undivided profits; dividends to stockholders.

When the net earnings of a trust company have been determined at the close of a dividend period as provided in section two hundred two of this article, if its surplus fund does not equal twenty per centum of the trust company's capital, one-tenth of such net earnings shall be credited to the surplus fund or so much thereof, less than one-tenth, as will make such fund equal twenty per centum of such capital. The balance of such net earnings, or the entire amount thereof if such fund equals such twenty per centum, may be credited to the trust company's profit and loss account; or, if its expenses and losses for such dividend period exceed its gross earnings, such excess shall be charged to its profit and loss account. The credit balance of such account shall constitute the undivided profits at the close of such dividend period, and shall be available for dividends.

The directors of any trust company may annually, semi-annually or quarterly, but not more frequently, declare such dividends as they shall judge expedient from such undivided profits. No trust company shall declare, credit or pay any dividends to its stockholders until it shall have made good any existing impairment of its capital and any existing encroachment on its reserves required to be maintained against deposits.

Source.—Former § 27, subd. 10. The section is identical with § 118 relating to banks. See the annotations to the latter section.

§ 205. Change of location.

Any trust company may make a written application to the superintendent of banks for leave to change its place of business to another place in the same county. The application shall state the reasons for such proposed change, and shall be signed and acknowledged by a majority of its board of directors and accompanied by the written assent thereto of stockholders owning at least two-thirds in amount of its stock. If the proposed place of business is within the limits of the village, borough or city, if in a city not divided into boroughs, in which the principal place of business of the trust company is located, such change may be made

upon the written approval of the superintendent; if beyond such limits, notice of intention to make such application, signed by the president and another principal officer of the trust company shall be published once a week for two successive weeks immediately preceding such application in a newspaper published in the city of Albany in which notices by state officers are required by law to be published, and in a newspaper to be designated by the superintendent, published in the county in which the place of business of such trust company is located. If the superintendent shall grant his certificate authorizing the change of location, as provided in section fifty of this chapter, the trust company shall cause such certificate to be published once in each week for two successive weeks in the newspaper in which the notice of application was published. When the requirements of this section shall have been fully complied with, the trust company may, upon or after the day specified in the certificate, remove its property and effects to the location designated therein, and thereafter its principal place of business shall be the location so specified; and it shall have all the rights and powers in such new location which it possessed at its former location.

Source.—Former § 31. The section is identical with § 119 relating to banks. See the annotations to the latter section.

§ 206. Rights and liabilities of stockholders; who liable as stockholders; who may enforce liability; within what time action must be commenced.

The rights, powers and duties of stockholders of trust companies shall be as prescribed in the general corporation law and the stock corporation law; but the individual liability of such stockholders for the contracts, debts, and engagements of the trust company and the time within which an action may be instituted to enforce such liability shall be governed exclusively by the provisions of this section and section eighty of this chapter.

The stockholders of every trust company shall be individually responsible, equally and ratably and not one for another, for all contracts, debts and engagements of the trust company, to the extent of the amount of their stock therein, at the par value thereof, in addition to the amount invested in such shares. An action to enforce such liability must be brought within six years

after the cause of action has accrued. The term "stockholder" as used in this section shall apply to:

1. Such persons as appear by the books of the trust company to be stockholders;

2. Every owner of stock legal or equitable although the same may be on such books in the name of another person, provided, however, that such term shall not apply to a person holding stock as collateral security for the payment of a debt and not appearing by the books of the trust company to be the owner and holder thereof in his own right, or to a person holding stock in a bona fide fiduciary capacity and not appearing by the books of the trust company to be the owner and holder thereof in his own right unless such fiduciary shall have invested the funds in his care in violation of law or of the terms under which said funds are held by him, in which case he shall be personally liable as a stockholder.

No person who has in good faith, and without any intent to evade his liability as a stockholder, caused his stock to be transferred on the books of the trust company when such trust company is solvent to any resident of this state of full age previous to any default in the payment of any debt or liability of the trust company, shall be subject to any personal liability for any contracts, debts or engagements of the trust company.

In case the superintendent of banks shall have taken possession of the property and business of the trust company pursuant to section fifty-seven of this chapter or a permanent receiver of such trust company shall have been appointed, all actions or proceedings to enforce the liability of stockholders under this section shall be taken and prosecuted only in the name of the superintendent or the receiver, as the case may be, unless the superintendent or receiver shall refuse to take such action or proceeding upon proper request in writing made by any creditor, or shall have failed or neglected to commence such action or proceeding within sixty days after the receipt of such request, and in that event such action or proceeding may be taken by any creditor of the trust company. But no such action shall be brought by a creditor until a judgment shall have been recovered by him against the trust company and an execution thereon shall have been returned unsatisfied in whole or in part.

Source.—This section is identical with § 120 relating to stockholders of banks. See the annotations to that section.

§ 207. Assessment of stockholder to make good impairment of capital; sale of stock.

Whenever the superintendent of banks shall have made requisition upon any trust company pursuant to section fifty-six of this chapter to make good the amount of an impairment of its capital, the directors of the trust company shall immediately give notice of such requisition to each stockholder and of the amount of the assessment which he must pay for the purpose of making good such deficiency, by a written or printed notice mailed to such stockholder at his place of residence, or served personally upon him. If any stockholder shall refuse or neglect to pay the assessment specified in such notice within sixty days from the date thereof, the directors of such trust company shall have the right to sell to the highest bidder at public auction the stock of such stockholder, after giving previous notice of such sale for two weeks in a newspaper of general circulation published in the county where the principal office of such trust company is located; or such stock may be sold at private sale, and without such published notice, provided, however, that before making a private sale thereof an offer in writing to purchase such stock shall first be obtained, and a copy thereof served upon the owner of record of the stock sought to be sold either personally or by mailing a copy of such offer to such owner at his place of residence or the address furnished by him to the trust company; and if, after service of such offer, such owner shall still refuse or neglect to pay such assessment within two weeks from the time of service of such offer, the said directors may accept such offer and sell such stock to the person or persons making such offer, or to any other person or persons making a larger offer than the amount named in the offer submitted to such stockholder; but said stock shall in no event be sold for a smaller sum than the valuation put on it by the superintendent in his determination and certificate, which valuation shall not be less than the amount of the assessment called for and the necessary costs of sale. Out of the avails of the stock sold the directors shall pay the necessary costs of sale and the amount of the assessment called for thereon. The balance, if any, shall be paid to the person or persons whose stock has been thus sold. A sale of stock as herein provided shall effect an absolute cancellation of the outstanding certificate or certificates evidencing

the stock so sold, and shall render the same null and void and a new certificate or certificates shall be issued to the purchaser or purchasers of said stock.

Source.—Former § 17. The section is identical with § 121 relating to banks. See the annotations to the latter section.

§ 208. Number of directors; classification; tenure of office of original directors.

The affairs of every such trust company shall be managed and its corporate powers exercised by a board of directors of such number, not less than seven nor more than thirty, as shall from time to time be prescribed in its by-laws.

The persons named in the organization certificate, or such of them respectively, as shall become holders of at least ten shares of such stock, shall constitute the first board of directors, and may add to their number not exceeding the limit of thirty, and shall severally continue in office until others are elected to fill their respective places. Within six months from the time when such trust company shall commence business, the first board of directors shall classify themselves by lot into three classes as nearly equal as may be. The term of office of the first class shall expire on the third Wednesday of January next following such classification. The term of office of the second class shall expire one year thereafter; and the term of office of the third class shall expire two years thereafter; provided that all directors whose term of office shall expire as heretofore provided shall none the less continue in office until their successors are elected as hereinafter provided.

Source.—Former § 195. Under the old law the number of directors was "not less than thirteen." As to reason for reduction of minimum number to seven, see note to § 180.

CROSS-REFERENCES.—Directors of banks, see §§ 122–131; of safe deposit companies, see §§ 324–327; of personal loan companies, see §§ 353–357; of savings and loan associations, see §§ 405–409; of land bank, see §§ 430–433; of credit unions, see §§ 464–469.

General provisions as to corporate directors, see Gen. Corp. Law, §§ 23–35, 43, 90–92, 109–111, 114; as to directors of stock corporations, see Stock Corp. Law, §§ 25–35.

Offences by directors, see Penal Law, §§ 290, 297, 664, 665, 668, post.

CHANGE IN NUMBER OF DIRECTORS of trust company governed by both this section and Stock Corp. Law, § 26, post. Atty.-Gen. Rep. (1907) 470.

NEGLIGENCE OF DIRECTORS.—Duties of directors and their liability to stockholders for losses caused by their negligence, discussed at length. *Kavanaugh v. Gould*, 147 App. Div. 281; *Kavanaugh v. Commonwealth Trust Co.*, 64 Misc. 303.

§ 209. Annual meeting of stockholders; notice.

At or before the expiration of the term of the first class, and annually thereafter, a number of directors shall be elected by the stockholders equal to the number of directors whose term will then expire who shall hold their offices for three years or until their successors are elected, and at such election, the stockholders may fill for the balance of the unexpired term any vacancy which has occurred in the office of any other director and which vacancy has not been filled by the directors of the company. Such election shall be held at the principal place of business of the company. Notice of the time and place of holding the stockholders' meeting for the election of directors and for action upon such other matters as may be brought before such meeting, shall be given by publication thereof at least once in each week for two successive weeks immediately preceding such election, in a newspaper published in the county, approved by the superintendent of banks, where such election is to be held, and in such other manner as may be prescribed in the by-laws.

Source.—Former § 195.

CROSS-REFERENCES.—Similar provision as to banks, see § 122 and annotations thereto.

§ 210. Qualifications and disqualifications of directors.

Every director of a trust company shall be a stockholder of the trust company owning in his own right at least ten shares of its capital stock; and every person elected to be a director who, after such election, shall hypothecate, pledge or cease to be the owner in his own right of the amount of stock aforesaid, shall cease to be a director of the trust company and his office shall be vacant, and he shall not be eligible for re-election as a director for a period of one year from the date of the next succeeding annual meeting.

Source.—Former § 195. The last clause is new.

CROSS-REFERENCES.—For similar provisions as to other corporations subject to the Banking Law, see § 123 and cross-references there given.

ALIEN MAY BE DIRECTOR of trust company, provided that at least one director is a citizen of the State. Atty.-Gen. Rep. (1912) vol. 2, p. 20. See also Atty.-Gen. Rep. (1897) 318.

§ 211. Oath of directors.

Each director, when appointed or elected, shall take an oath that he will, so far as the duty devolves on him, diligently and honestly administer the affairs of the trust company, and will not knowingly violate, or willingly permit to be violated, any of the provisions of law applicable to such trust company, and that he is the owner in good faith and in his own right, of the number of shares of stock required by this article, subscribed by him or standing in his name on the books of the trust company and that the same is not hypothecated, or in any way pledged as security for any loan or debt, and, in case of re-election or reappointment, that such stock was not hypothecated, or in any way pledged as security for any loan or debt during his previous term. Such oath shall be subscribed by the director making it, and certified by an officer authorized by law to administer oaths, and immediately transmitted to the superintendent of banks.

Source.—Former § 195.

CROSS-REFERENCES.—Identical provision as to banks, see § 124 and annotations thereto.

§ 212. Failure to elect; when vacancies filled by board.

In case of failure to elect any director on the day named, the directors whose terms of office do not that year expire may proceed to elect a number of directors equal to the number in the class whose term that year expires or such number as may have failed of re-election. The persons so elected, together with the directors whose terms of office shall not that year expire shall constitute the board until another election shall be held according to law. Vacancies occurring in the intervals of election shall be filled by the board of directors for the balance of the unexpired term.

Source.—Former § 195. The words at the end of the section "for the balance of the unexpired term" are new.

§ 213. Annual meeting of directors; election of officers.

Within fifteen days after the date on which the annual meeting of stockholders is held its directors shall, after their due qualifi-

cation, hold a meeting at which they shall elect a president from their own number, a vice-president, and such other officers as are required by the by-laws to be elected annually.

Source.— New.

CROSS-REFERENCES.— Similar provision as to banks, see § 128.

§ 214. Monthly meetings of directors; quorum; statement to directors.

The directors of every trust company shall hold a regular meeting at least once in each month. If the number of directors necessary to constitute a quorum is not prescribed in the certificate of incorporation or organization certificate, or in the by-laws, and no provision is made therein for determining the same, the directors may fix such number, which shall not be less than one-third of all the directors and in no case less than five, with the same effect as if such number were prescribed in the certificate of incorporation or organization certificate. The board of directors shall by resolution duly recorded in the minutes, designate an officer or officers whose duty it shall be to prepare and submit to each director at each regular meeting of the board, or to an executive committee of not less than five members of such board, a written statement of all the purchases and sales of securities, and of every discount, loan or other advance, including over-drafts and renewals made since the last regular meeting of the board, describing the collateral to such indebtedness as of the date of meeting at which such statement is submitted; but such officer or officers may omit from such statement discounts, loans or advances including overdrafts and renewals of less than one thousand dollars except as hereinafter provided. Such statement shall also contain a list giving the aggregate of loans, discounts and advances including overdrafts to each individual partnership, unincorporated association, corporation or person whose liability to the trust company has been increased one thousand dollars or more since the last regular meeting of the board, together with a description of the collateral to such indebtedness held by the trust company at the date of the meeting at which such statement is submitted. A copy of such statement, together with a list of the directors present at such meeting, verified by the affidavit of the officer or officers charged with the duty of preparing and submitting such statement shall be filed with the

records of the trust company within one day after such meeting, and be presumptive evidence of the matters therein stated.

Source.—Former § 42, except the second sentence which is from former § 195. Renewals are included for the first time. The minimum number of directors necessary to constitute a quorum has been changed from seven to five.

CROSS-REFERENCES.—Identical provision as to banks, see § 129 and annotations thereto.

§ 215. Examinations by directors into affairs of trust company; may employ assistants.

It shall be the duty of the board of directors of every trust company during the months of March or April and during the months of September or October in each year to examine, or to cause a committee of at least three of its members to examine, fully the books, papers and affairs of the trust company, and the loans and discounts thereof, and particularly the loans or discounts made directly or indirectly to its officers or directors, or for the benefit of such officers or directors or for the benefit of other corporations of which such officers or directors are also officers or directors, or in which they have a beneficial interest as stockholders, creditors, or otherwise, with the special view of ascertaining their safety and present value, and the value of the collateral security, if any, held in connection therewith, and into such other matters as the superintendent of banks may require. Such directors shall have the power to employ such assistance in making such examination as they may deem necessary.

Source.—Former § 23. The section is identical with § 130 relating to banks. See the annotations to the latter section.

§ 216. Reports of directors' examinations; penalty for failure to make or file.

On or before the fifteenth day of the month of May or November succeeding any examination made pursuant to the requirements of the last section, a report in writing thereof, sworn to by the directors making the same, shall be made to the board of directors of such trust company, and placed on file in said trust company, and a duplicate thereof filed in the office of the superintendent of banks. Such report shall particularly contain a statement of the assets and liabilities of the trust company exam-

ined, as shown by the books, together with such deductions from the assets, and the addition of such liabilities, direct, indirect, contingent or otherwise as such directors or committee, after such examination, may find necessary in order to determine the true condition of the trust company. It shall also contain a statement showing in detail every known liability to such trust company, direct, indirect, contingent, or otherwise, of every officer or director thereof and of every corporation in which any such officer or director owns stock to the amount of twenty-five per centum of the total outstanding stock, or of which any such officer or director is also an officer or director. It shall also contain a statement, in detail, of loans, if any, which in their opinion are doubtful or worthless, together with their reasons for so regarding them; also a statement of loans made on collateral security which in their opinion are insufficiently secured, giving in each case the amount of the loan, the name and market value of the collateral, if it has any market value, and, if not, a statement of that fact, and its actual value as nearly as possible. Such report shall also contain a statement of overdrafts, of the names and amounts of such as they consider worthless or doubtful, and a full statement of such other matters as affect the solvency and soundness of the institution. If the directors of any trust company shall fail to make, or to cause to be made, or to file such report of examination in the manner, and within the time specified, such trust company shall forfeit to the people of the state one hundred dollars for every day such report shall be delayed.

Source.—Former § 23. The section is identical with § 131 relating to banks. See the annotations to the latter section.

§ 217. Communications from banking department must be submitted to directors and noted in minutes.

Each official communication directed by the superintendent of banks or one of his deputies to a trust company or to any officer thereof, relating to an examination or investigation conducted by the banking department or containing suggestions or recommendations as to the conduct of the business of the trust company, shall be submitted, by the officer receiving it, to the board of directors at the next meeting of such board, and duly noted in the book containing the minutes of the meetings of such board.

Source.—Former § 41. The section is identical with § 132 relating to banks. See the annotations to the latter section.

§ 218. Reports to superintendent; penalty for failure to make.

Within ten days after service upon it of the notice provided for by section forty-two of this chapter, every trust company shall make a written report to the superintendent, which report shall be in the form and shall contain the matters prescribed by the superintendent and shall specifically state the items of capital, deposits, specie and cash items, public securities and private securities, real estate and real estate securities, and such other items as may be necessary to inform the public as to the financial condition and solvency of the trust company, or which the superintendent may deem proper to include therein, and shall also state the amount of deposits the payment of which, in case of insolvency, is preferred by law or otherwise over other deposits. Every such report shall be verified by the oaths of the president or vice-president and another principal officer of the trust company and such verification shall state that the report is true and correct in all respects to the best of the knowledge and belief of the persons verifying it, and that the usual business of the trust company has been transacted at the location required by this article and not elsewhere. Every such report exclusive of the verification shall, within thirty days after it shall have been filed with the superintendent, be published by the trust company in one newspaper of the place where its principal place of business is located, if there be one; if not, then in the newspaper published nearest where such trust company is located.

Every such trust company shall also make such other special reports to the superintendent as he may from time to time require, in such form and at such date as may be prescribed by him, and such report shall, if required by him, be verified in such manner as he may prescribe.

Every such trust company, which does not have an unimpaired surplus fund equal to at least twenty per centum of its capital shall, within ten days after declaring a dividend, make a written report to the superintendent stating the amount of such dividend, the amount of its net earnings in excess thereof and the amount carried to the surplus fund. Such report shall be verified by the oath of the president or vice-president and another principal officer of the trust company.

quired by the superintendent, such trust company shall forfeit to the people of the state the sum of one hundred dollars for every day that such report shall be delayed or withheld, and for every day that it shall fail to report any such omitted matter, unless the time therefor shall have been extended by the superintendent as provided by section forty-nine of this chapter. The moneys forfeited by this section, when recovered, shall be paid into the state treasury to reimburse the state for the sums advanced by it for the expenses of the department.

Source.—This section is identical with § 133 relating to banks. See statement as to source in the annotations to that section.

Amended by L. 1916, Chap. 96. In effect March 30, 1916.

§ 219. Annual report of unclaimed deposits, dividends and interest; publication; penalty for non-compliance.

In the month of September in each year, and on or before the tenth day thereof, every trust company shall make a written report to the superintendent of banks, verified by the oaths of the president or vice-president and one other principal officer of the trust company, which report shall contain a true and accurate statement of all deposits made with the trust company and all dividends declared and interest accrued upon any of its stock or other evidences of indebtedness, which on the first day of August preceding such report amounted to fifty dollars or over and had remained unclaimed by any person or persons authorized to receive the same for five years then next preceding. Such statement shall set forth the date of each such deposit, its amount and the name and last known place of residence or post-office address of the person making it, the name of each person in whose favor and the time when any such dividend may have been declared or any such interest may have accrued, its amount, and upon what number of shares or upon what amount of stock or other evidences of indebtedness of such trust company it was declared or accrued. In case any such trust company shall at said date have held no such unclaimed deposits, dividends or interest, it shall at the time above specified make a written report to the superintendent so stating, which report shall be verified as hereinabove provided. No deposits, dividends or interest shall be deemed unclaimed

within the meaning of this section if it appears from the books of the trust company or from other written evidence on file with the trust company that the person or persons authorized to receive them have knowledge thereof.

Every such trust company which reports any unclaimed deposits, dividends or interest under the provisions of this section shall cause to be published once in each week for two successive weeks in a newspaper designated by the superintendent published in the county and in the village or city in which such trust company is located, if there be a newspaper published therein, and at least once in a newspaper published at Albany in which notices by state officers are required to be published, a true copy of such report, and shall file with the superintendent of banks on or before the first day of October in each year proof by affidavit of such publication. The expense of such publication shall be paid by the trust company, but if, on or before the first day of August in that year, the trust company shall have mailed, postage prepaid, to each person authorized to receive any such unclaimed deposit, dividend or interest, at his last known place of residence or post-office address, a statement showing the amount to which such person is entitled and requesting written acknowledgment thereof, the trust company may reimburse itself for such expense by deducting the amount thereof from the sums due any such person or persons who shall not have made written acknowledgment before the filing of such report with the superintendent, in the proportion that each such sum bears to the aggregate thereof.

Any such trust company failing to make any report or to file any affidavit of publication required by this section shall forfeit to the people of the state the sum of one hundred dollars for each day such report or the filing of such affidavit of publication shall be so delayed or withheld, unless the time therefor shall have been extended by the superintendent as provided by section forty-nine of this chapter.

Source.—Former § 30. The section is identical with § 134 relating to banks. See the annotations to the latter section.

§ 220. Liability of trust company for assessments by superintendent.

When the superintendent, pursuant to the powers conferred on him by article two of this chapter, shall have levied any assess-

ment upon any trust company and shall have duly notified such trust company of the amount thereof, the amount so assessed shall become a liability of and shall be paid by such trust company to the superintendent.

Source.—New. The section is identical with § 135 relating to banks. See the annotations to the latter section.

§ 221. Preservation of books and records of trust company.

Every trust company shall preserve all its records of final entry including cards used under the card system, and deposit tickets, for a period of at least six years from the date of making the same or from the date of the last entry thereon.

Sources.—New. The section is identical with § 136 relating to banks. See the annotations to the latter section.

§ 222. Restrictions on officers, directors and employees.

No officer, director, clerk or other employee of any trust company, and no person in any way interested or concerned in the management of its affairs, shall as individuals discount, or directly or indirectly, make any loan upon any note or other evidence of debt, which he shall know to have been offered for discount to such trust company and to have been refused. Every person violating the provisions of this subdivision shall, for each offense, forfeit to the people of the state twice the amount of the loan which he shall have made.

No officer, director, clerk or other employee of any trust company shall borrow, directly or indirectly, from the trust company with which he is connected any sum of money without the written approval of a majority of the board of directors thereof filed in the office of the trust company or embodied in a resolution adopted by a majority of such board exclusive of the director to whom the loan is made; and in no event shall any officer of a trust company located in a city of the first class borrow any sum of money from such trust company. If an officer, director, clerk or other employee of any trust company shall own or control a majority of the stock of any other corporation a loan to that corporation shall be considered for the purpose of this subdivision as a loan to such officer, director, clerk or other employee. Every

person knowingly violating this provision shall, for each offense, forfeit to the people of the state twice the amount which he shall have borrowed.

Source.—Former § 27, subd. 6 and 7. The section is identical with § 139 relating to banks. See the annotations to the latter section.

§ 223. Prohibition against encroachments upon powers of trust companies.

No corporation other than a trust company organized under the laws of this state shall have or exercise in this state the power to receive deposits of money, securities or other personal property from any person or corporation in trust, or have or exercise in this state any of the powers specified in subdivisions one, four, five, six, seven and eight of section one hundred eighty-five of this article, nor have or maintain an office in this state for the transaction of, or transact, directly or indirectly, any such or similar business, except that a federal reserve bank may exercise the powers conferred by subdivision one of such section if authorized so to do by the laws of the United States and any domestic corporation legally exercising any of the powers conferred by such subdivision at the time this act takes effect may continue to exercise such powers, and a trust company incorporated in another state may be appointed and may accept appointment and may act as executor of, or trustee under, the last will and testament of any deceased person in this state, provided trust companies of this state are permitted to act as such executor or trustee in the state where such foreign corporation has his domicile, and such foreign corporation shall have executed and filed in the office of the superintendent of banks a written instrument appointing such superintendent in his name of office, its true and lawful attorney upon whom all process in any action or proceeding against such executor or trustee, affecting or relating to the estate represented or held by such executor or trustee or the acts or defaults of such corporation in reference to such estate, with the same effect as if it existed in this state and had been lawfully served with process therein, and shall also have filed in the office of the superintendent a copy of its charter by its secretary under its corporate seal, together with the post office address of its principal office.

No foreign corporation, having authority to act as executor of or trustee under the last will and testament of any deceased person, shall establish or maintain directly or indirectly any branch office or agency in this state or shall in any way solicit directly or indirectly any business as executor or trustee therein. If any such foreign corporation violates this provision, such foreign corporation shall not thereafter be appointed or act as executor or trustee in this state. The validity of any mortgage heretofore given by a foreign corporation to a trust company doing business within the foreign domicile of such mortgagor to secure the payment of an issue of bonds shall not be affected by any of the provisions of this section and such mortgage shall be enforceable in accordance with the laws of this state against any property covered thereby within the state of New York.

Source.—Former § 186, subd. 11. The exceptions in favor of federal reserve banks and domestic corporations exercising powers conferred by § 185, subd. 1, are new.

CROSS-REFERENCES.—Superintendent as attorney to accept service of process, see § 28.

Prohibition against encroachments upon certain banking powers, see § 140.

NO OTHER REQUIREMENTS OF FOREIGN TRUST COMPANIES.—Under the former law the Attorney-General was of the opinion that a foreign trust company could not exercise in this state any of the powers conferred on domestic trust companies without complying with the provisions of former §§ 14, 33-a, 33-b and 34. Atty-Gen. Rep. (1912) vol. 2, p. 530; Atty-Gen. Rep. (1905) 422. Under the present law compliance with this section is all that is required of a foreign trust company.

FOREIGN TRUST COMPANIES MAY LEND MONEY directly upon bonds and mortgages in this state. Atty-Gen. Rep. (1905) 435.

CANNOT BE TRUSTEE UNDER NEW YORK MORTGAGE.—A foreign trust company is forbidden by this section to exercise the powers conferred by § 185, subd. 4, and is therefore excluded from the right to act as trustee for the bondholders under a mortgage by a New York corporation on lands in this state. Atty-Gen. Rep. (1907) 477.

FOREIGN TRUST COMPANY AS EXECUTOR.—In the absence of the express authorization contained in this section it seems that a foreign trust company would not act as executor in this state by reason of the prohibition in Code Civ. Proc., § 2612, against granting letters testamentary to "an alien not an inhabitant of this State." See Matter of Avery, 45 Misc. 529.

ARTICLE VI.**Savings Banks.**

Section 230. Incorporation; qualifications of incorporators; certificate of organization.

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232. Submitting organization certificate to superintendent.

233. When corporate existence begins; conditions precedent.

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- 281. Charters of all savings banks to be conformed to this article.

§ 230. Incorporation; qualifications of incorporators; certificate of organization.

When authorized by the superintendent of banks as provided by section twenty-three of this chapter, not less than nine or more than thirty persons may form a corporation to be known as a savings bank. Such persons must be citizens of the United States at least four-fifths of them must be residents of this state, and at least two-thirds of them must be residents of the county where the business of the savings bank is to be transacted. They shall subscribe and acknowledge an organization certificate in duplicate, which shall specifically state:

1. The name by which the savings bank is to be known.
2. The place where its business is to be transacted.
3. The name, occupation, residence and post-office address of each incorporator.
4. The sums which each incorporator will contribute in cash to the initial guaranty fund and to the expense fund respectively, as provided in sections two hundred thirty-four and two hundred thirty-five of this article.
5. A declaration that each incorporator will accept the responsibilities and faithfully discharge the duties of a trustee of the savings bank, and is free from all the disqualifications specified in section two hundred sixty of this article.

Source.—Former § 130. Minimum number of incorporators reduced from 13 to 9; for reason, see note on reduction of minimum number of trust com-

pany incorporators, § 180. Maximum number has also been limited so as to prevent scattering of possibility. Qualification of residence in state comes from former § 137 defining qualifications as to residence of *trustees*; qualification of residence in county is new, as is also qualification as to citizenship. Subdivision 4 and the last clause of subdivision 5 are new.

OTHER STATUTES AFFECTING SAVINGS BANKS.—Savings banks are subject to all provisions of the General Corporation Law, except such as are made inapplicable either expressly or by necessary implication. (See Gen. Corp. L., § 321.) But as they have no capital stock (Const. Art. VIII, § 4), they are not subject to the provisions of the Stock Corporation Law.

Exemption of deposits from taxation, see Tax Law, § 4, post.

Franchise tax, see id. § 189, post.

Credit on purchase of State bonds, see id. § 190, post.

Recording tax on mortgages, see id. §§ 252, 253.

CONSTITUTIONAL PROVISION.—Art. VII, § 4, requires the Legislature to make uniform all charters of savings banks and institutions for savings; provides that no such corporation shall have any capital stock, that the trustees shall have no interest in the profits, or in any loan or use of money or property of the corporation.

CROSS-REFERENCES.—Definition of “savings bank,” see § 2.

Trustees, see §§ 260–269.

Similar requirements in regard to other corporations seeking to engage in business under the Banking Law, see § 100 and cross-references there given.

Qualifications of incorporators, see Gen. Corp. Law, § 4, post.

Name of corporation, see Gen. Corp. Law, § 6, post.

Change of name, see Gen. Corp. Law, §§ 60–65, post.

Amended and supplemental certificates of incorporation, see Gen. Corp. Law, § 7, post.

Lost or destroyed certificates, see Gen. Corp. Law, § 8.

Certificate as evidence, see Gen. Corp. Law, § 9.

Extension and revival of corporate existence, see Gen. Corp. Law, §§ 37–39, 41, post.

False statements or rumors as to banking institutions, see Penal Law, § 303, post.

Only incorporators, who constitute the first board of trustees of a savings bank, need be citizens of the United States; members elected thereafter need not be citizens. Atty.-Gen. Rep. July 22, 1915.

§ 231. Notice of intention to organize; filing, publication and service upon existing savings banks.

At the time of executing the organization certificate, the proposed incorporators shall sign a notice of intention to organize

the savings bank, which shall specify their names, the name of the proposed corporation and its location as set forth in the organization certificate. The original of such notice shall be filed in the office of the superintendent of banks within sixty days after the date of its execution and a copy thereof shall be published at least once a week for four successive weeks in a newspaper designated by the superintendent as provided in section twenty of this chapter, the publication to be commenced within thirty days after such designation. At least fifteen days before the organization certificate is submitted to the superintendent for examination as provided in the section next following, a copy of such notice shall be served upon each savings bank organized and doing business in the village, borough or city, if in a city not divided into boroughs, specified as the location of the proposed savings bank, by mailing such copy, postage prepaid, to said savings bank.

Source.—Former § 131, revised. Limitation of time within which original notice must be filed with superintendent, designation of newspaper by superintendent, time within which publication must be commenced after designation, the savings banks to be served with notice (formerly those organized and doing business in the county) and the manner or service of notice, are new.

CROSS-REFERENCES.—Duties of Superintendent upon receipt of notice of intention, see § 20.

Similar provision as to banks, see § 101; as to trust companies, see § 181.

§ 232. Submitting organization certificate to superintendent; proof of publication and service of notice of intention.

After the lapse of at least twenty-eight days from the date of the first due publication of the notice of intention to organize and within ten days after the date of the last publication thereof, the organization certificate, executed in duplicate, shall be submitted for examination to the superintendent of banks at his office in Albany, with affidavits showing due publication and service of the notice of intention to organize prescribed in section two hundred thirty-one of this article.

Source.—New. A substitute for former § 132.

CROSS-REFERENCES.—See the cross-references given under § 102 which is identical with this section.

§ 233. When corporate existence begins; conditions precedent to commencing business.

When the superintendent shall have approved the organization certificate, as provided in section twenty-three of this chapter, the corporate existence of the savings bank shall begin, and it may exercise all the powers necessary to the completion of its organization. But the savings bank shall transact no business other than that relating to the completion of its organization until:

1. The incorporators shall have made the deposit of the initial guaranty fund required by section two hundred and thirty-four of this article, and if the superintendent shall so require, shall have entered into the agreement or undertaking with the superintendent and shall have filed the surety bond securing the same, as prescribed in said section.

2. The incorporators shall have made the deposit of the expense fund required by section two hundred and thirty-five of this article, and if the superintendent shall so require, shall have entered into the agreement or undertaking with the superintendent and shall have filed the surety bond securing the same, as prescribed in said section.

3. It shall have transmitted to the superintendent of banks the name, residence and post-office address of each officer of the corporation.

4. The superintendent shall have duly issued to it the authorization certificate specified in section twenty-four of this chapter.

Source.—Former §§ 32 and 135. Subdivisions 1 and 2 are new; subdivision 3 is based on former § 135, and subd. 4 on former § 32.

CROSS-REFERENCES.—For similar provisions as to other persons and corporations engaging in business under the Banking Law, see § 103 and cross-references there given.

Forfeiture of corporate rights by not commencing business, see § 485.

§ 234. Initial guaranty fund; agreement of incorporators to contribute; bond.

Before any savings bank hereafter organized shall be authorized to do business in this state, its incorporators shall create a guaranty fund for the protection of its depositors against losses upon its investments whether arising from depreciation in the market value of its securities or otherwise.

1. Such guaranty fund shall consist of payments in cash made by the original incorporators and of sums credited thereto from the earnings of the savings bank as hereinafter required.

2. The incorporators shall deposit to the credit of such savings bank in cash as an initial guaranty fund at least five thousand dollars. They shall also enter into such agreement or undertaking with the superintendent of banks as trustee for the depositors with the savings bank as he may require, to make such further contributions in cash to the guaranty fund of such savings bank as may be necessary to maintain the solvency of the savings bank and to render it safe for it to continue business. Such agreement or undertaking to an amount approved by the superintendent of banks shall be secured by a surety bond executed by a domestic or foreign corporation authorized by the superintendent of insurance to transact within this state the business of surety, and shall be filed in the banking department. Such agreement or undertaking and such surety bond need not be made or furnished unless the superintendent of banks shall require the same.

3. Prior to the liquidation of any such savings bank, such guaranty fund shall not be in any manner encroached upon, except for losses and the repayment of contributions made by incorporators or trustees as hereinafter provided, until it exceeds twenty-five per centum of the amount due depositors.

4. The amounts contributed to such guaranty fund by the incorporators or trustees shall not constitute a liability of the savings bank, except as hereinafter provided, and any losses sustained by the savings bank in excess of that portion of the guaranty fund created from earnings may be charged against such contributions pro rata.

Source.—New.

CROSS-REFERENCES.—Definition of guaranty fund, see § 3.

Return of contributions to initial guaranty fund, see § 236, subd. 2.

Return of contributions heretofore made, see § 237.

Establishment of guaranty fund of existing savings banks, see § 252.

Transferable certificates representing amounts contributed, see § 238, subd. 2.

Right to dividends thereon, see § 256, subd. 3.

Under the former law, no statutory provision was made to meet the expenses of a new savings bank until it secured deposits from which it could create earnings, nor was there any fund against which expenses and losses

could be charged in the first instance so that dividends might be paid *ab initio* to depositors. This and the following section providing for an expense fund were incorporated for the purpose of providing a method of instituting a savings bank, under which the liability for such advances was subordinated to deposit liabilities, and the future necessity of resorting to questionable expedients was obviated.

§ 235. Expense fund; agreement of incorporators to contribute; bond.

Before any savings bank hereafter organized shall be authorized to do business in this state, its incorporators shall create an expense fund from which the expense of organizing such savings bank and its operating expenses may be paid until such time as its earnings are sufficient to pay its operating expenses in addition to such dividends as may be declared and credited to its depositors from its earnings.

The incorporators shall deposit to the credit of such savings bank in cash as an expense fund the sum of five thousand dollars. They shall also enter into such an agreement or undertaking with the superintendent of banks as trustee for the depositors with the savings bank as he may require, to make such further contributions in cash to the expense fund of such savings bank as may be necessary to pay its operating expenses until such time as it can pay them from its earnings in addition to such dividends as may be declared and credited to its depositors. Such agreement or undertaking, to an amount approved by the superintendent of banks, shall be secured by a surety bond executed by a domestic or foreign corporation authorized by the superintendent of insurance to transact within this state the business of surety, and shall be filed in the banking department. Such agreement or undertaking and such surety bond need not be made or furnished unless the superintendent of banks shall require the same.

The amounts contributed to the expense fund of such savings bank by the incorporators or trustees shall not constitute a liability of such savings bank, except as hereinafter provided.

Source.—New.

CROSS-REFERENCES.—How expense fund may be returned, see § 236, subd. 1.

Transferable certificates representing amount contributed, see § 238, subd. 2.

Right to dividends thereon, see § 256, subd. 3.

For purpose of section see note to § 234.

§ 236. Return of initial guaranty fund and expense fund.

1. Contributions made by the incorporators or trustees to the expense fund may be repaid pro rata to the contributors from that portion of the guaranty fund created from earnings, whenever such payments will not reduce the guaranty fund below five per centum of the total amount due depositors. In case of the liquidation of the savings bank before such contributions to the expense fund have been repaid, any contributions to the expense fund remaining unexpended after the payment of the expenses of liquidation may be repaid to the contributors pro rata.

2. Whenever the contributions of the incorporators or trustees to the expense fund of such savings bank have been returned to them, the contributions made to the guaranty fund by incorporators or trustees may be returned to them pro rata, from that portion of the guaranty fund created from the earnings of the savings bank, provided that such repayments will not reduce the earned portion of the guaranty fund of such savings bank below five per centum of the amount due depositors. In case of the liquidation of the savings bank before such contributions to the guaranty fund have been repaid, any portion of such contributions not needed for the payment of the expenses of liquidation and the payment of depositors in full and the repayment of contributions to the expense fund may be repaid to the contributors pro rata.

Source.—New.

CROSS-REFERENCES.—Initial guaranty fund, see § 234.

Expense fund, see § 235.

Transferable certificates representing contributions, see § 238, subd. 2.

Return of contributions heretofore made, see § 237.

See note to § 234.

§ 237. Return of contributions heretofore made.

Contributions heretofore made by the incorporators or trustees of any savings bank to pay its expenses or to maintain its solvency, under an agreement with the superintendent of banks that such contributions may be returned whenever such return will not affect the solvency of such savings bank or render it unsafe for it to continue business, may be returned in accordance with the provisions of such agreement.

Source.— New.

This section was inserted so that extra-legal expedients heretofore adopted to protect depositors of new institutions might be legalized, and both the savings bank and contributors to the funds might be protected in the return of the money. See note to § 234.

§ 238. General powers.

In addition to the powers conferred by the general corporation law, every savings bank shall have, subject to the restrictions and limitations contained in this article, the following powers:

1. To receive deposits of money, to invest the same in the property and securities prescribed in section two hundred and thirty-nine of this article, to declare dividends in the manner prescribed in sections two hundred and fifty-four to two hundred and fifty-six of this article, and to exercise by its board of trustees or duly authorized officers or agents, subject to law, all such incidental powers as shall be necessary to carry on the business of a savings bank.

2. To issue transferable certificates showing the amounts heretofore or hereafter contributed by any incorporator or trustee for the purpose of maintaining the solvency of such savings bank, or for the purpose of paying its expenses. Such certificate shall show that it does not constitute a liability of such savings bank, except as hereinbefore provided.

3. To purchase, hold and convey real property as prescribed in sections two hundred and thirty-nine and two hundred and forty of this article.

4. To pay depositors as hereinafter provided and, when requested by them, by drafts upon deposits to the credit of the savings bank in the city of New York or in foreign exchange, and to charge current rates of exchange for such drafts.

5. To borrow money in an emergency for the purpose of repaying depositors and to pledge or hypothecate securities as collateral for loans so obtained.

6. To collect or protest promissory notes or bills of exchange and remit the proceeds of the collections by drafts upon deposits to the credit of the savings bank in the city of New York, and to charge the usual rates or fees for such collection and remittance or such protest.

7. To sell gold or silver received in payment of interest or

principal of obligations owned by the savings bank, or from depositors in the regular course of business.

8. To do all other acts authorized by this article.

Source.—Subdivision 1 is from former § 135 rewritten; subd. 2 is new; subd. 3 is a power transferred from former § 147; subd. 4 comes from former § 152; subd. 5 is adapted from former § 152, but the power to borrow is limited to the purpose stated, and the requirements of the previous approval of the superintendent of banks and the resolution of the trustees have been transferred to § 243; subd. 6, in so far as it provides for the manner of payment of proceeds of collections is adapted from former § 152, but the power to collect and protest notes and time bills is not only new but was expressly withheld from savings banks by former § 152; subd. 7 is from former § 152; subd. 8 is new.

CROSS-REFERENCES.—Powers of corporations generally, see Gen. Corp. Law, §§ 10, 11; acquisition of real property, *id.*, § 13, 14. See note to definition of savings bank, § 2.

Power to make by-laws, see § 262.

Restrictions on power to borrow money, hypothecate securities or issue certificates of deposit, see § 243.

Limitation on amount of deposits, see § 247.

Regulations as to repayment of deposits, see §§ 248, 249.

Investments and loans, see §§ 239, 240, 241 and notes thereto.

Regulations and restrictions as to dividends, see § 256.

MAY NOT ACT AS TRUSTEE.—The Banking Law does not authorize a savings bank to act as trustee. Atty.-Gen. Rep. (1910) 853.

§ 239. Investment of deposits and guaranty fund and restrictions thereon.

A savings bank may invest the moneys deposited therein, the sums credited to the guaranty fund thereof and the income derived therefrom, in the following property and securities and no others, and subject to the following restrictions:

1. The stocks or bonds or interest-bearing notes or obligations of the United States, or those for which the faith of the United States is pledged to provide for the payment of the interest and principal, including the bonds of the District of Columbia.

2. The stocks or bonds or interest-bearing obligations of this state, issued pursuant to the authority of any law of the state.

3. The stocks, bonds or interest-bearing obligations of any state of the United States, upon which there is no default and upon which there has been no default for more than ninety days; pro-

vided that within ten years immediately preceding the investment such state has not been in default for more than ninety days in the payment of any part of principal or interest of any debt duly authorized by the legislature of such state to be contracted by such state since the first day of January, eighteen hundred and seventy-eight.

4. The stocks, bonds, interest-bearing obligations, or revenue notes sold at a discount, of any city, county, town, village, school district, union free school district or poor district in this state, provided that they were issued pursuant to law and that the faith and credit of the municipality or district that issued them are pledged for their payment.

5. The stocks or bonds of any incorporated city situated in one of the states of the United States which was admitted to statehood prior to January first, eighteen hundred and ninety-six, and which since January first, eighteen hundred and sixty-one, has not repudiated or defaulted in the payment of any part of the principal or interest of any debt authorized by the legislature of any such state to be contracted, provided said city has a population, as shown by the federal census next preceding said investment, of not less than forty-five thousand inhabitants, and was incorporated as a city at least twenty-five years prior to the making of said investment, and has not, since January first, eighteen hundred and seventy-eight, defaulted for more than ninety days in the payment of any part either of principal or interest of any bond, note or other evidence of indebtedness, or effected any compromise of any kind with the holders thereof. But if, after such default on the part of any such state or city, the debt or security, in the payment of the principal or interest of which such default occurred, has been fully paid, refunded or compromised by the issue of new securities then the date of the first failure to pay principal or interest, when due, upon such debt or security, shall be taken to be the date of such default, within the provisions of this subdivision, and subsequent failures to pay installments of principal or interest upon such debt or security, prior to the refunding or final payment of the same, shall not be held to continue said default or to fix the time thereof, within the meaning of this subdivision, at a date later than the date of said first failure in payment. If at any time the indebtedness of any such city, together

with the indebtedness of any district, or other municipal corporation or subdivision except a county, which is wholly or in part included within the bounds or limits of said city, less its water debt and sinking funds, shall exceed seven per centum of the valuation of said city for purposes of taxation, its bonds and stocks shall thereafter, and until such indebtedness shall be reduced to seven per centum of the valuation for the purposes of taxation, cease to be an authorized investment for the moneys of savings banks.

6. Bonds and mortgages on unincumbered real property situated in this state, to the extent of sixty per centum of the appraised value thereof. Not more than sixty-five per centum of the whole amount of deposits and guaranty fund shall be so loaned or invested. If the loan is on unimproved and unproductive real property, the amount loaned thereon shall not be more than forty per centum of its appraised value. No investment in any bonds and mortgages shall be made by any savings bank except upon the report of a committee of its trustees charged with the duty of investigating the same, who shall certify to the value of the premises mortgaged or to be mortgaged, according to their judgment, and such report shall be filed and preserved among the records of the corporation.

7. The following bonds of railroad corporations:

(a) The first mortgage bonds of any railroad corporation of this state, the principal part of whose railroad is located within this state, or of any railroad corporation of this or any other state or states connecting with and controlled and operated as a part of the system of any such railroad corporation of this state, and of which connecting railroad at least a majority of its capital stock is owned by such a railroad corporation of this state, or in the mortgage bonds of any such railroad corporation of an issue to retire all prior mortgage debt of such railroad companies respectively; provided that at no time within five years next preceding the date of any such investment, such railroad corporation of this state or such connecting railroad corporation respectively shall have failed regularly and punctually to pay the matured principal and interest of all its mortgage indebtedness, and in addition thereto regularly and punctually to have paid in dividends to its stockholders during each of said five years an amount at least equal to four

per centum upon all its outstanding capital stock; and provided, further, that at the date of every such dividend the outstanding capital stock of such railroad corporation, or such connecting railroad company respectively shall have been equal to at least one-third of the total mortgage indebtedness of such railroad corporations respectively, including all bonds issued or to be issued under any mortgage securing any bonds in which such investment shall be made. If by means of consolidation a railroad corporation shall own and possess the properties and franchises which prior thereto belonged to similar corporations, and if the outstanding capital stock of the railroad corporation formed by such consolidation shall be equal to at least one-third of the total mortgage indebtedness of such railroad corporation, including all bonds issued or to be issued under any mortgage securing any bonds in which such investment shall be made, and if during the five years next preceding such consolidation no one of the consolidating railroad corporations shall have failed regularly and punctually to pay the matured principal and interest of all its mortgage indebtedness, and if in addition thereto during the five years next preceding such consolidation, the dividends paid in cash by one or more of such consolidating corporations have equaled or exceeded four per centum per annum upon an amount equal to the combined capital stock of the consolidating corporations as outstanding at the time of each dividend payment during such five-year period, such successor railroad corporation formed by such consolidation shall be considered as having regularly and punctually paid such matured principal and interest and such dividends equal to or exceeding four per centum per annum during the same period of five years, provided further that the amount of dividends paid in cash during each of such five years has equally or exceeded four per centum per annum on the stock of the consolidated corporation as outstanding at the time of such consolidation.

(b) The mortgage bonds of the following railroad corporations: The Chicago and Northwestern Railroad Company; Chicago, Burlington and Quincy Railroad Company, Michigan Central Railroad Company, Illinois Central Railroad Company, Pennsylvania Railroad Company, Delaware and Hudson Company, Delaware, Lackawanna and Western Railroad Company, New York, New Haven and Hartford Railroad Company, Boston and

Maine Railroad Company, Maine Central Railroad Company, the Chicago and Alton Railroad Company, Morris and Essex Railroad Company, Central Railroad of New Jersey, United New Jersey Railroad and Canal Company, also in the mortgage bonds of railroad companies whose lines are leased or operated or controlled by any railroad company specified in this paragraph if said bonds be guaranteed both as to principal and interest by the railroad company to which said lines are leased or by which they are operated or controlled. Provided that at the time of making investments authorized by this paragraph the said railroad corporations issuing such bonds shall have earned and paid regular dividends of not less than four per centum per annum in cash on all their issues of capital stock for the ten years next preceding such investment, and provided the capital stock of any said railroad corporations shall equal or exceed in amount one-third of the par value of all its bonded indebtedness; and further provided that all bonds authorized for investment by this paragraph shall be secured by a mortgage which is a first mortgage on either the whole or some part of the railroad and railroad property of the company issuing such bonds, or that such bonds shall be mortgage bonds of an issue to retire all prior mortgage debts of such railroad company; provided, further, that the mortgage which secures the bonds authorized by this paragraph is dated, executed and recorded prior to January first, nineteen hundred and five.

(c) The mortgage bonds of the Chicago, Milwaukee and Saint Paul Railway Company, and the Chicago, Rock Island and Pacific Railway Company, so long as they shall continue to earn and pay at least four per centum dividends per annum on their outstanding capital stock, and provided their capital stock shall equal or exceed in amount one-third of the par value of all their bonded indebtedness, and further provided that all bonds of either of said companies hereby authorized for investment shall be secured by a mortgage which is a first mortgage on either the whole or some part of the railroad or railroad property actually in the possession of and operated by said company, or that such bonds shall be mortgage bonds of an issue to retire all prior debts of said railroad company; provided, further, that the mortgage which secures the bonds authorized by this paragraph is dated, executed and recorded prior to January first, nineteen hundred and five.

(d) The first mortgage bonds of the Fonda, Johnstown and Gloversville Railroad Company, or in the mortgage bonds of said railroad company of an issue to retire all prior mortgage debts of said railroad company and provided the capital stock of said railroad company shall equal or exceed in amount one-third of the par value of all its bonded indebtedness and provided also that such railroad be the standard gauge of four feet eight and one-half inches, and in the mortgage bonds of the Buffalo Creek Railroad Company of an issue to retire all prior mortgage debts of said railroad company, provided that the bonds authorized by this paragraph are secured by a mortgage dated, executed and recorded prior to January first, nineteen hundred and five.

(e) The mortgage bonds of any railroad corporation incorporated under the laws of any of the United States, which actually owns in fee not less than five hundred miles of standard gauge railway exclusive of sidings, within the United States, provided that at no time within five years next preceding the date of any such investment such railroad corporation shall have failed regularly and punctually to pay the matured principal and interest of all its mortgage indebtedness and in addition thereto regularly and punctually to have paid in dividends to its stockholders during each of said five years an amount at least equal to four per centum upon all its outstanding capital stock; and provided further that during said five years the gross earnings in each year from the operations of said company, including therein the gross earnings of all railroads leased and operated or controlled and operated by said company, and also including in said earnings the amount received directly or indirectly by said company from the sale of coal from mines owned or controlled by it, shall not have been less in amount than five times the amount necessary to pay the interest payable during that year upon its entire outstanding indebtedness, and the rentals for said year of all leased lines, and further provided that all bonds authorized for investment by this paragraph shall be secured by a mortgage which is at the time of making said investment or was at the date of the execution of said mortgage (one) a first mortgage upon not less than seventy-five per centum of the railway owned in fee by the company issuing said bonds exclusive of sidings at the date of said mortgage or (two) a refunding mortgage issued to retire all prior lien mortgage debts of said company out-

standing at the time of said investment and covering at least seventy-five per centum of the railway owned in fee by said company at the date of said mortgage. But no one of the bonds so secured shall be a legal investment in case the mortgage securing the same shall authorize a total issue of bonds which together with all outstanding prior debts of said company, after deducting therefrom in case of a refunding mortgage, the bonds reserved under the provisions of said mortgage to retire prior debts at maturity, shall exceed three times the outstanding capital stock of said company at the time of making said investment. And no mortgage is to be regarded as a refunding mortgage, under the provisions of this paragraph, unless the bonds which it secures mature at a later date than any bond which it is given to refund, nor unless it covers a mileage at least twenty-five per centum greater than is covered by any one of the prior mortgages so to be refunded.

(f) Any railway mortgage bonds which would be a legal investment under the provisions of paragraph (e) of this subdivision, except for the fact that the railroad corporation issuing said bonds actually owns in fee less than five hundred miles of road, provided that during five years next preceding the date of any such investment the gross earnings in each year from the operations of said corporation, including the gross earnings of all lines leased and operated or controlled and operated by it, shall not have been less than ten million dollars.

(g) The mortgage bonds of a railroad corporation described in the foregoing paragraph (e) or (f) or the mortgage bonds of a railroad owned by such corporation, assumed or guaranteed by it by endorsement on said bonds, provided said bonds are prior to and are to be refunded by a general mortgage of said corporation the bonds secured by which are made a legal investment under the provisions of said paragraph (e) or (f); and provided, further, that said general mortgage covers all the real property upon which the mortgage securing said underlying bonds is a lien.

(h) Any railway mortgage bonds which would be a legal investment under the provisions of paragraph (e) or (g) of this subdivision except for the fact that the railroad corporation issuing said bonds actually owns in fee less than five hundred miles of road, provided the payment of principal and interest

of said bonds is guaranteed by endorsement thereon by, or provided said bonds have been assumed by, a corporation whose first mortgage is, or refunding mortgage bonds are, a legal investment under the provisions of paragraph (e) or (f) of this subdivision. But no one of the bonds so guaranteed or assumed shall be a legal investment in case the mortgage securing the same shall authorize a total issue of bonds which, together with all the outstanding prior debts of the corporation making said guarantee or so assuming said bonds, including therein the authorized amount of all previously guaranteed or assumed bond issues, shall exceed three times the capital stock of said corporation, at the time of making said investment.

(i) The first mortgage bonds of a railroad the entire capital stock of which, except shares necessary to qualify directors, is owned by, and which is operated by a railroad whose last issued refunding bonds are a legal investment under the provisions of paragraph (a), (e), or (f) of this subdivisions, provided the payment of principal and interest of said bonds is guaranteed by endorsement thereon by the company so owning and operating said road, and further provided the mortgage securing said bonds does not authorize an issue of more than twenty thousand dollars in bonds for each mile of road covered thereby. But no one of the bonds so guaranteed shall be a legal investment in case the mortgage securing the same shall authorize a total issue of bonds which together with all the outstanding prior debts of the company making said guarantee, including therein the authorized amount of all previously guaranteed bond issues, shall exceed three times the capital stock of said company, at the time of making said investment.

Bonds which have been or shall become legal investments for savings banks under any of the provisions of this section shall not be rendered illegal as investments, though the property upon which they are secured has been or shall be conveyed to another corporation, and though the railroad corporation which issued or assumed said bond has been or shall be consolidated with another railroad corporation, if the consolidated or purchasing corporation shall assume the payment of said bonds and shall continue to pay regularly interest or dividends or both upon the securities issued against, in exchange for or to acquire the stock

of the company consolidated or the property purchased or upon securities subsequently issued in exchange or substitution therefor, to an amount at least equal to four per centum per annum upon the capital stock outstanding at the time of such consolidation or purchase of said corporation which has issued or assumed such bonds.

Not more than twenty-five per centum of the assets of any savings bank shall be loaned or invested in railroad bonds, and not more than ten per centum of the assets of any savings bank shall be invested in the bonds of any one railroad corporation described in paragraph (a) of this subdivision, and not more than five per centum of such assets in the bonds of any other railroad corporation. In determining the amount of the assets of any savings bank under the provisions of this subdivision it securities shall be estimated in the manner prescribed for determining the per centum of par value surplus by section two hundred and fifty-seven of this article.

Street railroad corporations shall not be considered railroad corporations within the meaning of this subdivision.

8. (a) Promissory notes payable to the order of the savings bank upon demand, secured by the pledge and assignment, if necessary, of the stocks or bonds or any of them enumerated in subdivisions one, two, three, four, five and ten of this section or by the railroad bonds or any of them mentioned and described in subdivision seven of this section, but no such loan shall exceed ninety per centum of the cash market value of such securities so pledged. Should any of the securities so held in pledge depreciate in value after the making of such loan, the savings bank shall require an immediate payment of such loan or of a part thereof or additional security therefor, so that the amount loaned thereon shall at no time exceed ninety per centum of the market value of the securities so pledged for such loan.

(b) Promissory notes made payable to the order of the savings bank upon demand by a savings and loan association of this state which has been incorporated for three years or more and has an accumulated capital of at least fifty thousand dollars.

9. Real estate as follows:

(a) A plot whereon there is or may be erected a building or buildings suitable for the convenient transaction of the business of

the savings bank, from portions of which not required for its own use a revenue may be derived.

(b) Such as shall be conveyed to it in satisfaction of debts previously contracted in the course of its business.

(c) Such as it shall purchase at sales under judgments, decrees or mortgages held by it.

The trustees of a savings bank shall not be held liable for investing in state or municipal bonds named in the last list furnished by the superintendent of banks pursuant to section fifty-two of article two of this chapter, or in any railroad bonds mentioned in such list, which have been legally issued and properly executed, unless such savings bank shall have been notified by the superintendent of banks that, in his judgment, such bonds do not conform or have ceased to conform to the provisions of this section.

10. Bonds of the land bank of the State of New York.

Source.—Former §§ 146, 147, 150.

Subdivision 7a, amended by L. 1915, chap. 515. In effect May 4, 1915. The amendment of 1915 added the last sentence to subdivision 7a.

Subd. 8(a) amended and subd. 10 added by L. 1916, chap. 363. In effect May 1, 1916.

The language of the first sentence is based upon the first sentence of former § 146, with the addition of the words "the sums credited to the guaranty fund thereof," and "in the following property and securities and no others; and subject to the following restrictions." This sentence and subdivision 8 supersede the first sentence of former § 150 relating to loans on personal security.

Subdivisions 1 and 2 are subdivisions 1 and 2 of former § 146, adopted without change.

Subdivision 3 supersedes former § 146, subd. 3, the provisions of which are materially amended and condensed. The former subdivision was the result of legislation designed to include certain specific issues of state bonds among the investments authorized. The present subdivision makes all state bonds subject to the same requirements. The present proviso that the state shall not have been in default on any debt authorized by the legislature to be contracted by the state *since January 1st, 1878*, is designed to make available as investments the bonds of southern states which may have defaulted in the payment of debts contracted during the "reconstruction period" after the Civil War.

Subdivision 4 is former § 146, subd. 4, amended so as to include revenue notes sold at a discount.

Subdivision 5 is former § 146, subd. 5, adopted without change, except that the clause at the end "but the superintendent of banks may, in his discretion, require any savings bank to sell such bonds or stocks of said

city, as may have been purchased prior to said increase of debt," has been transferred to § 55.

Subdivision 6 includes the first four sentences of former § 146, subd. 6, without substantial change, except the addition of the words "and guaranty fund" in the second sentence.

Subdivision 7 includes all of subdivision 6 of former § 146 except the first four sentences, the intention being merely to place in a separate subdivision the provisions relating to railroad bonds. No substantial change is made in the text.

Subdivision 8 is adopted from former § 148 which permitted such loans from the available fund. See note to § 251.

Subdivision 9 supersedes subdivision 7 of former § 146 and adopts parts of former § 147 without substantial change.

The last paragraph of the section is new.

CROSS-REFERENCES.—Duty of superintendent to furnish list of legal investments, see § 52; to furnish estimated market value of bonds, see § 53; to determine valuation of securities in arrears of interest, see § 54.

When superintendent may require sale of securities, see § 55.

Duty of trustees to make investments, see § 251.

Restrictions on taking and holding real estate, see § 240.

Requirements as to mortgage loans, insurance of buildings and recording of mortgages, see § 241.

Method of carrying investments on books, see § 246.

Amortization of securities, see § 246.

Criminal liability of trustees for unlawful investments, see Penal Law, § 296, post.

General Corporation Law, §§ 13 and 14, relating to the acquisition of real property, are excluded by this section from application to savings banks.

LIABILITY OF TRUSTEES.—Trustees of a savings bank are under a positive duty to see to it that the funds of the bank are not invested contrary to law, and a disregard of that obligation renders the trustees personally liable. *Paine v. Barnum*, 59 How. Pr. 303; *Paine v. Mead*, 59 How. Pr. 318; *Hun v. Cary*, 82 N. Y. 65.

This rule is now qualified by the last paragraph of § 239.

When a loss sustained by a savings bank through the illegal purchase by the trustees of certain bonds of a foreign state has been made good by third persons who gave their obligations to the bank in compliance with a requirement imposed by the superintendent as a condition of permitting the bank to continue in business, the trustees are released from liability to the bank. *Hun v. Van Dyck*, 26 Hun 567, aff'd 92 N. Y. 660.

DEPRECIATION OF SECURITY.—A savings bank cannot legally retain and continue an investment which though legal when made has become illegal by reason of the changed condition and character of the security. In such a case the superintendent of banks had power, under the former Banking Law, to require the bank to dispose of the security. The manner of making the change of investment rests in his sound discretion, but the power should

be so exercised as to prevent loss or embarrassment in the business of the bank. *Atty.-Gen. Rep. (1908) 371.*

This is now covered by § 55.

UNAUTHORIZED SECURITY ACCEPTED AS PAYMENT.—A savings bank may accept in payment of a debt securities not authorized by statute as investments. *Rome Savings Bank v. Krug, 102 N. Y. 331.*

SUBDIVISION 3

To fulfill the requirements of the statute the bonds or obligations must not only be issued by a State, but must be obligations of the State for which the credit of the State is pledged. *Atty.-Gen. Rep. (1909) 730.*

The bonds of the Board of Commissioners of the Port of New Orleans are not legal investments for savings banks. *Atty.-Gen. Rep. (1909) 730; Atty.-Gen. Rep. (1911), vol. 2, p. 611.*

A state's resistance of the payment of its bonds on the ground that the Constitution did not authorize the creation of the debt is not a default in payment within the meaning of the statute. *Atty.-Gen. Rep. (1892) 64.*

That ten years have not elapsed since the admission of a state to the Union does not prevent its bonds from being authorized investments, if since becoming a State it has never defaulted in the payment of any of its obligations. *Atty.-Gen. Rep. (1909) 728.*

In 1891 the Attorney-General gave his opinion that the bonds of the State of Minnesota would not be legal investments for savings banks until all of the bonds issued in 1858 and known as "Minnesota State Railroad Bonds" had been cancelled or the State had been released from liability thereon. *Atty.-Gen. Rep. (1891) 260.*

Where the State is restrained by injunction from paying the interest, this does not constitute a default. *Op. Atty.-Gen., Feb. 19, 1915.*

Bonds of the territory of Hawaii are legal investments for the savings banks of this State. *Atty.-Gen., August 10, 1914.*

The following State bonds, according to the rulings of the Attorney-General, are legal investments for savings banks in this State: Bonds of the State of Colorado, *Atty.-Gen. Rep. (1892) 64*; bonds of the State of Oklahoma, *Atty.-Gen. Rep. (1909) 728*; bonds of the State of New Mexico issued pursuant to an act of the legislature approved June 1, 1912, *Atty.-Gen. Rep. (1913), vol. 2, p. 391*; the refunding bonds of the State of Tennessee issued pursuant to the act of the General Assembly approved February 21, 1913, *Atty.-Gen. Rep. (1913), vol. 2, p. 158.*

Bonds or certificates of indebtedness of the Ohio State University, if issued in conformity to the statutes of Ohio, are "interest bearing obligations" of that State, and are legal investments for savings banks. *Atty.-Gen. Rep. (1892) 265.*

In 1912 the Attorney-General gave his opinion that the bonds of the State of Louisiana were not legal investments for savings banks, because that State had defaulted in the payment of certain of its obligations known as "baby bonds." *Atty.-Gen. Rep. (1912) 346.* But later, upon a fuller presentation of the facts, the Attorney-General ruled that the "baby bonds" were not obligations for which the credit of the State was pledged, and

therefore that the State was not in default; and that bonds about to be issued by the State pursuant to constitutional and statutory authority to refund certain bonds known as "Consolidated Bonds" authorized by the legislature of 1892, issued in 1895, and constituting legal investments for savings banks in New York, were likewise legal investments.

SUBDIVISION 4

See General Municipal Law, § 7, making municipal bonds a charge upon the municipality and providing for their payment.

The fact that the inhabitants of a village or school district do not own the fee of the land on which they reside, as where the land in the village or district is held on long leases, does not prevent the bonds of the village or school district from being authorized investments under this subdivision. *Atty.-Gen. Rep. (1899) 275.*

Warrants issued by the City of Buffalo pursuant to Laws of 1889, ch. 323, as amended by Laws of 1890, ch. 383, are "interest bearing obligations" of said city within the meaning of this subdivision, and are legal investments for savings banks. *Atty.-Gen. Rep. (1891) 213.*

The village and school bonds of the village of Salamanca are legal investments for savings banks. *Atty.-Gen. Rep. (1899) 275.*

The bonds of the City of Cohoes, issued under Laws of 1904, ch. 471, are legal investments for savings banks. *Atty.-Gen. Rep. (1909) 736.*

A JUDGMENT AGAINST A CITY is not an obligation of the kind described in the statute as an authorized investment. *Atty.-Gen. Rep. (1903) 362.*

SUBDIVISION 5

The trustees of a savings bank should not allow bonds of a city to remain past due in their hands, nor should they enter into an agreement with the city to extend the time of payment of the bonds while other bonds of the same issue would be paid. *Atty.-Gen. Rep. (1911), vol. 2, p. 196:*

The words "the valuation of said city for purposes of taxation," as used in the third sentence of this subdivision, means the sum at which the property is assessed. *Atty.-Gen. Rep. (1911), vol. 2, p. 686.*

In estimating the valuation of property for purposes of taxation to determine whether the indebtedness of a city of another State exceeds 7 per cent. of such valuation, it is proper to include the valuation placed upon money and credits in said city pursuant to the statutes of the State in which it is situated. *Op. Atty.-Gen., April 27, 1914.*

Said valuation includes personal property as well as real estate. *Atty.-Gen. Rep. (1911), vol. 2, p. 133.*

In computing the indebtedness of a city to determine whether it exceeds 7 per cent. of the "valuation of said city for purposes of taxation," tax certificates of the city should be added to the city's general indebtedness only when the faith and credit of the municipality are pledged for their payment so that the obligation created is general; and even then they should not be so added until there is a failure of the special fund devoted to their redemption. *Atty.-Gen. Rep. (1896) 249.*

The amount of securities in the city's sinking fund should be deducted from its indebtedness. *Atty.-Gen. Rep. (1895) 309.*

Within the meaning of this subdivision debts incurred by a state during a period when it had no legal state government recognized by the United States, as was the situation in Texas from 1861 to 1869, are not debts "authorized by the legislature of * * * such state to be contracted;" and the failure of a state to pay its indebtedness incurred in aid of the rebellion against the United States, which it was forbidden to pay by the Fourteenth Amendment to the United States Constitution, is not a repudiation or default in payment. Atty.-Gen. Rep. (1912), vol. 2, p. 442.

That certain bonds of the Territory of Florida, issued in aid of various corporations, and certain bonds of the State of Florida, issued in aid of certain railroads, remain unpaid, is not such a default on the part of the State of Florida as to render the bonds of the City of Jacksonville illegal investments for savings banks. The unpaid bonds having been illegally issued. Op. Atty.-Gen., June 9, 1914.

The following municipal bonds, according to the opinion of the Attorney-General, are legal investments for savings banks in this State: Bonds of the city of Dallas, Texas, Atty.-Gen. Rep. (1912), vol. 2, p. 442; bonds of the city of Seattle, Washington, Atty.-Gen. Rep. (1910), p. 830; bonds of Kansas City, Kansas, Atty.-Gen. Rep. (1910), p. 827; the improvement bonds of the city of Portland, Oregon, issued pursuant to § 383-a of the Portland charter, Atty.-Gen. Rep. (1913), vol. 2, p. 288.

The bonds of the city of San Francisco are no longer legal investments, as the indebtedness of the city exceeds 7 per cent. of the assessed value of property therein. Op. Atty.-Gen., March 12, 1915.

Bonds of the city of Omaha, Nebraska, are legal investments for savings banks. Atty.-Gen. Rep., February 29, 1916.

Bonds of the city of El Paso, Texas, are legal investments for savings banks. Atty.-Gen. Rep., April 20, 1916.

Independent school district bonds of the city of Duluth, Minnesota, are not legal investments for savings banks. Atty.-Gen. Rep., July 26, 1915.

The bonds of the city of San Francisco are no longer lawful investments for savings banks. Atty.-Gen. Rep., March 12, 1915.

SUBDIVISION 6

A twenty-one year lease with a privilege of two renewals of twenty-one years each is not an incumbrance which will prevent a savings bank from taking a mortgage of the fee. Atty.-Gen. Rep. (1896) 171.

A savings bank may take a mortgage upon an undivided interest in real estate held by tenants in common, provided that the mortgage share is of the prescribed value. The fact that others than the mortgagor have interests in common with him does not constitute an incumbrance. Atty.-Gen. Rep. (1896) 271.

A savings bank may invest in a second mortgage when it holds the first mortgage on the same property. The intent of the section with respect to "unincumbered" real property is to secure to the bank a first lien. The same result may be accomplished by discharging the first mortgage and taking a new one for the entire loan. Atty.-Gen. Rep. (1909) 723.

RESTRICTIVE COVENANT AS AN INCUMBRANCE.—If a restrictive covenant affecting the use of real estate is not in the nature of a condition,

and no forfeiture or disturbance of title can result from its breach, and the value of the property will not be reduced in consequence thereof, it is not an incumbrance within the meaning of this subdivision; but the effect of the restriction should be considered by the trustees of the bank in estimating the value of the property. *Atty.-Gen. Rep. (1891) 51.*

A MORTGAGE OF A LEASEHOLD ESTATE, though the term of the lease is ninety-nine years, is not an authorized investment. *Atty.-Gen. Rep. (1899) 275.*

BONDS SECURED BY TRUST MORTGAGE.—Bonds secured by a mortgage executed by a corporation to a trustee are not legal investments for savings banks except in so far as the statute (see subd. 7) expressly authorizes investment in such securities. The mortgages contemplated by subdivision 6 are such as vest in the bank, directly or by assignment, title to the mortgage as well as to the bond and the right to foreclose without the intervention of a trustee. *Atty.-Gen. Rep. (1892) 299; Atty.-Gen. Rep. (1902) 245.*

In the case of a trust mortgage it makes no difference that the savings bank takes all the bonds. *Atty.-Gen. Rep. (1892) 299.*

A loan made by a savings bank to individuals, but for the benefit of a foreign corporation, with collateral security of the foreign corporation's notes secured by trust deeds upon unimproved vacant land in a foreign state, the value of the land being not more than one-fifth of the amount of the loan, is illegal and renders the trustees personally liable. *Paine v. Barnum, 59 How. Pr. 303. See also Paine v. Irwin, 59 How. Pr. 316; Paine v. Meade, 59 How. Pr. 318.*

PARTICIPATION MORTGAGE NOT AUTHORIZED.—Real estate upon which a savings bank would have been authorized to loan \$65,000 was mortgaged to the extent of \$74,000. A proposal was made that the mortgagee assign his mortgage to the bank so that the latter would become the absolute owner thereof to the extent of \$65,000, with the right to collect that sum with interest before any money was payable to the mortgagee; that if more should be collected the bank should pay it over to the mortgagee, who should have the right to an accounting of all such excess moneys received by the bank. Attorney-General O'Malley gave his opinion that while the proposed plan would not violate the statutory prohibition against lending more than sixty per cent. of the value of the land, it placed the bank in the position of a trustee, and that the Banking Law did not permit a savings bank to enter transactions of that character. *Atty.-Gen. Rep. (1910) 853.*

BUILDING LOAN.—Real estate upon which a building is in the process of construction must, until completion of the building, be deemed "unproductive" within the meaning of this subdivision. Its prospective value cannot be considered. Hence a "building loan" or loan for the purpose of constructing a building cannot exceed forty per cent. of the value of the land at the time when the loan is authorized and the value of the land certified by the trustees. *Atty.-Gen. Rep. (1912), vol. 2, p. 318.*

AMOUNT OF SURPLUS THAT MAY BE INVESTED ON MORTGAGE.—Under the language of this subdivision as it formerly stood, the limitation that "not more than sixty-five per centum of the whole amount of deposits shall be so loaned or invested" applied to deposits only and had no reference to surplus. *Atty.-Gen. Rep. (1906) 501.*

But now the surplus constitutes the guaranty fund (§ 252) and the present

subdivision prohibits the investment of more than sixty-five per centum of the deposits "and guaranty fund" on mortgage.

VIOLATION NOT AVAILABLE TO DEBTOR.—That a loan upon bond and mortgage was made by the savings banks in violation of the provisions of this subdivision, the mortgage not being a first lien and the value of the mortgaged property not being certified, is not available as a defense to the debtor. *Auburn Savings Bank v. Brinkerhoff*, 44 Hun 142.

SUBDIVISION 7 (a)

In mentioning the bonds of a railroad company the statute has reference to bonds of which the company is the maker or obligor and for the payment of which it is directly liable in an action on the bonds. *Atty.-Gen. Rep.* (1904) 365.

The Manhattan Elevated Railway Company was held by the Attorney-General to be a "railroad corporation" within the meaning of this paragraph. *Atty.-Gen. Rep.* (1899) 183; *Atty.-Gen. Rep.* (1902) 217.

The 3½ per cent. bonds of the New York Central & Hudson River Railroad Company, due 1997, are not first mortgage bonds within the meaning of this paragraph. *Op. Atty.-Gen.*, Dec. 17, 1914.

Railroad bonds, which are legal investments for savings banks, are not deprived of their status by the extension of the lien of the mortgage by which they are secured to cover additional railroad properties on which there are prior mortgage liens. *Op. Atty.-Gen.*, March 12, 1915.

The 3½ per cent. bonds of the New York Central & Hudson River Railroad Company secured by the company's mortgage of 1897 are not rendered illegal as investments for savings banks by reason of the extension of the lien of that mortgage to cover additional railroad properties acquired through the consolidation of April 16, 1913, upon which properties there exist prior mortgage liens, securing bonds of the constituent companies assumed by the New York Central & Hudson River Railroad Company at the date of the consolidation, which bonds the mortgage of 1897 does not purport to retire. *Atty.-Gen. Rep.*, March 12, 1915.

Bonds of the New York Central & Hudson River Railroad Company under its refunding improvement mortgage to the Guaranty Trust Company, dated, October 1, 1913, are legal investments for savings banks. *Atty.-Gen. Rep.*, May 27, 1915.

The 3½ per cent. bonds of the New York Central & Hudson River Railroad Company, due 1997, are not first mortgage bonds within the meaning of paragraph a, subdivision 7, of sec. 239 of the Banking Law. *Atty.-Gen. Rep.*, December 17, 1914.

Assumed bonds of the Buffalo, Rochester & Pittsburgh Railroad, a company complying with paragraph (a) of subdivision 7 are legal investments. *Atty.-Gen. Rep.*, March 12, 1915.

Bonds of the Fonda, Johnstown & Gloversville Railroad Company are legal investments for savings banks although the company has recently ceased to pay four per cent. on its capital stock. *Atty.-Gen. Rep.*, March 16, 1915.

Mortgage bonds of other railroads assumed by a railroad complying with this paragraph are legal investments. *Op. Atty.-Gen.*, March 12, 1915.

A CHANGE OF MOTIVE POWER from steam to electricity, as authorized by law, does not affect the legality of investments in the company's bonds. *Atty.-Gen. Rep.* (1902) 217.

SUBDIVISION 7 (b)

The refunding bonds of the Chicago & Alton Railroad Company are legal investment for savings banks. Atty.-Gen. Rep. (1900) 192.

Mortgage bonds of other railroads, assumed by the Chicago & Northwestern Railroad which has acquired their properties, are lawful investments for savings banks under the terms of subdivision 7 (b) of section 239 of the Banking Law. Atty.-Gen. Rep., March 12, 1915.

The bonds of the Burlington, Cedar Rapids and Northern Railway Company are not legal investments for savings banks, because the property of that company was conveyed to the Chicago, Rock Island and Pacific Railroad Company, which is not mentioned in paragraph (b), and the subsidiary companies of which are not mentioned in paragraph (c). The fact that the latter company executed a mortgage providing for the payment of the bonds of the former company does not affect the situation, as that mortgage is only a collateral undertaking. Atty.-Gen. Rep. (1904) 338; Atty.-Gen. Rep. (1904) 365.

SUBDIVISION 7 (c)

The following bonds of the Chicago, Milwaukee & St. Paul Railway Company are legal investments: The 25-year, 4 per cent., gold bonds of 1909; the 15-year, 4 per cent., European loan of 1910, debenture bonds, and the 4½ per cent. convertible gold bonds of 1912. Op. Atty.-Gen., April 14, 1914.

Mortgage bonds of other railroads assumed by a railroad company with this paragraph are legal investments. Op. Atty.-Gen., March 12, 1915.

Bonds assumed in the same manner by railroads complying with paragraph (c) of section 239, subdivision 7 are also legal investments. Atty.-Gen. Rep., March 12, 1915.

SUBDIVISION 7 (d)

Bonds of the Fonda, Johnstown & Gloversville Railroad Company are legal investments for savings banks, although the company has recently ceased to pay 4 per cent. on its capital stock. Atty.-Gen. Rep., March 16, 1915.

Refunding railroad bonds issued to retire all prior mortgage debts, if once established as legal investments, are not rendered illegal through the acquisition by the railroad of additional properties upon which there are mortgage debts. It is immaterial whether or not such debts are assumed by the railroad, and if assumed, whether or not the lien of the refunding mortgages is extended to cover such properties. Op. Atty.-Gen., March 12, 1915.

Mortgage bonds of other railroads assumed by a railroad company with this paragraph are legal investments. Op. Atty.-Gen., March 12, 1915.

SUBDIVISION 7 (e)

The words "gross earnings" as used in § 239, subd. 7-e of the Banking Law of this State includes gross earnings of the lessee railroad corporation notwithstanding the fact that the report of said company to the railroad commission is made separately from that of the lessor. Atty.-Gen. Rep., December 11, 1914.

The proviso of this paragraph with respect to dividends means payment of dividends in cash; a stock dividend will not suffice. Atty.-Gen. Rep. (1908) 371.

The statute does not require that the railroad issuing the bonds shall have owned five hundred miles of track for five years preceding the date of the investment by the savings bank. It is enough that the railroad owns that amount of track when the investment is made. Atty.-Gen. Rep. (1909) 712.

In computing the gross earnings of the railroad company, the rentals for the year of "all leased lines" must be included, but not rentals for track, yards, terminals, office or facilities or properties other than leased lines. *Atty.-Gen. Rep. (1909) 740.*

It seems that the bonds secured by the Northern Division mortgage of the Eastern Railway Company of Minnesota (a company which has been absorbed by the Great Northern Railway Company) are legal investments for savings banks. *Atty.-Gen. Rep. (1909) 712.*

In January, 1908, the bonds of the Missouri Pacific Railway Company ceased to be legal investments for savings banks. *Atty.-Gen. Rep. (1908) 371.*

Mortgage bonds of other railroads assumed by a railroad which must comply with this paragraph are not legal investments unless such assumed bonds comply with paragraph (g). *Op. Atty.-Gen., March 12, 1915.*

Railroads which must comply with paragraph (e) of subdivision 7 are not entitled to have bonds assumed by them listed as lawful investments unless the assumed bonds comply with paragraph (g), that is, are refunded by bonds which are themselves legal investments. Assumed bonds of the Baltimore & Ohio Railroad are not therefore lawful investments, because its refunding bonds are not legal investments. *Atty.-Gen. Rep., March 12, 1915.*

Refunding railroad bonds issued to retire all prior mortgage debts, once established as legal investments for savings banks, are not rendered illegal through the acquisition by the railroad company of additional properties upon which there are at the date of purchase mortgage debts then assumed, or not assumed, by the railroad company, and if assumed, whether or not the lien of the refunding mortgage is extended to cover the equities in these after-acquired properties. *Atty.-Gen. Rep., March 12, 1915.*

SUBDIVISION 8

See note to § 251.

Though the investments which a savings bank is authorized to make do not include commercial paper, and a promissory note discounted by such a bank may be void, the bank may nevertheless recover the money lent thereon. *Pratt v. Short, 79 N. Y. 437; Rome Savings Bank v. Krug, 102 N. Y. 331.*

A savings bank having discounted promissory notes may accept in satisfaction of the debt the notes of other persons and may recover thereon. *Rome Savings Bank v. Krug, 102 N. Y. 331.*

Where money is lent by a savings bank by way of discount of promissory notes, but upon the security of a bond and mortgage as well, the mortgage is valid and may be enforced. *Pratt v. Eaton, 79 N. Y. 449.* See also *Auburn Savings Bank v. Brinkerhoff, 44 Hun 142.*

SALE OF PLEDGED STOCK ON STOCK EXCHANGE.—A savings bank holding corporate stock pledged as security for a loan may sell the stock through a broker on the New York Stock Exchange, and a contract with a broker for the purpose is binding upon the bank. The loan on the security of the stock is not void, and even if it were voidable, the fact does not affect the rights of the broker, who is under no duty to inquire as to the bank's title to the stock. *Sistare v. Best, 88 N. Y. 527, aff'd 24 Hun 384.*

SUBDIVISION 9

BANK BUILDING.—The purchase of an unnecessarily expensive property as a home for the bank is not justified even though it is for a fair value

and the motive of the trustees is to advertise the bank. *Hun v. Cary*, 82 N. Y. 65.

ERECTING BUILDINGS AS AN INVESTMENT.—The erection of houses by a savings bank upon land purchased by it is an unauthorized investment, although the land was bought at foreclosure of a mortgage owned by the bank. *Atty.-Gen. Rep.* (1908) 378.

§ 239-a. Investment of deposits, etc., in judgments against the State.

A savings bank may also invest moneys deposited therein, the sums credited to the guaranty fund thereof and the income derived therefrom in:

1. Judgments heretofore or hereafter obtained against the state, for or on account of any liability or obligation heretofore created or incurred by the state.

2. Contracts entered into by the special examiner and appraiser of canal lands and the owner of lands, structures and waters or property rights pertaining thereto or connected therewith, heretofore appropriated or damaged by the state in the construction of the improved canals, as provided for by chapter one hundred and ninety-five of the laws of nineteen hundred and eight and acts amendatory thereof.

And it is hereby authorized to purchase, take an assignment of, hold, sell and assign said judgments and contracts, and to liquidate and settle the same with the state as hereinafter provided.

On obtaining a judgment or entering into a contract, and on the approval by the attorney-general of the title to lands, structures and waters appropriated or damaged, as herein provided, the attorney-general may certify such approval to the person or persons entitled to payment by reason of such appropriation or damage, in duplicate.

Every such assignment and every subsequent assignment thereof by the bank shall be in duplicate and set forth the postoffice address of the assignee; and one copy thereof must be forthwith filed by the assignee with the comptroller.

On the assignment of such judgment or contract to a savings bank, the assignor shall thereupon deliver to such savings bank the duplicate certificates of the attorney-general, one of which shall thereupon be filed by such savings bank with the state comptroller.

The comptroller is hereby authorized and it shall be his duty to pay to such savings bank immediately upon the effecting of any

such assignment and the filing thereof with him, the interest, if any, accrued on such judgment or contract debt to the time of the effecting of the assignment, and he shall on the first day of January of each year, until the judgment or contract debt is paid in full, pay to such bank or its assigns the interest which has accrued thereon since the time of effecting the assignment, provided, however, that the comptroller may at any time serve upon such bank or its assignee, either personally or by mailing the same to the postoffice address given in the assignment, a notice to the effect that funds are available for the payment of the same and that he is authorized and ready to issue his warrant to pay the same, whereupon it shall be the duty of every such assignee to accept such payment. Interest shall be allowed and paid by the state on each such judgment or contract so assigned until the twentieth day after the service by the comptroller of the aforementioned notice or until payment, if payment be sooner made. At any time after such assignment and certificate by the attorney-general shall be filed with the comptroller, the comptroller may demand of the attorney-general that the abstract of title and certificate of search as to incumbrances and all releases, waivers, contract settlements, conveyances and other instruments affecting such title be filed forthwith in the office of the comptroller. The filing thereof shall thereupon authorize the comptroller to make payment as hereinabove provided.

In determining the value of the assets or property held by a savings bank or of said judgments or contracts the superintendent of banks shall value such judgments and contracts at the face value thereof with accrued interest.

A savings bank shall not purchase any such judgments or contract and take an assignment thereof unless such assignment shall be indorsed with the approval of the attorney-general, and, upon said approval being so indorsed, the judgment or contract assigned shall thereby become and remain until paid a valid obligation of the state to the assignee thereof, or to its successor or assigns, for the amount therein specified.

The word "judgment" as used in this section includes and is intended to be synonymous with the words "determination" and "award."

Added by L. 1915, Ch. 269. In effect April 13, 1915.

§ 240. Restrictions on taking and holding real estate.

The cost of the plot and building or buildings for the transaction of the business of a savings bank shall in no case exceed twenty-five per centum of the guaranty fund of such savings bank, except with the approval of the superintendent of banks; and before the purchase of such property is made or the erection of a building or buildings is commenced the estimate of the cost thereof and plans of the building or buildings shall be submitted to the superintendent for such approval.

All real estate purchased by any savings bank or taken by it in satisfaction of debts due it, shall be conveyed to it directly by name and the conveyance shall be immediately recorded in the office of the proper recording officer of the county in which such real estate is located.

Every parcel of real estate purchased or acquired by any savings bank shall be sold by it within five years from the date on which it shall have been acquired unless:

1. There shall be a building thereon occupied by the savings bank as an office; or
2. The superintendent of banks, on application of its board of trustees, shall have extended the time within which such sale shall be made.

Source.—The first paragraph is from former § 147; “net surplus” has been changed to “guaranty fund.” The second paragraph is new and is adapted from former § 27, subd. 3, relating to the recording of mortgages taken to secure loans. The second and third paragraphs are identical with § 107, relating to banks, and § 189, relating to trust companies.

The last paragraph is taken from former § 147, subd. 2, second sentence.

CROSS-REFERENCES.—Purposes for which real estate may be acquired, see § 239, subd. 9.

Recording mortgages and assignments thereof, see § 241.

Restrictions on taking and holding real estate by other corporations and individuals under this chapter, see cross-references under § 107.

For extension of time to dispose of real estate, see § 49, subd. 3.

For investment in real estate, see § 239, subd. 9.

The approval of the Superintendent of Banks, as required by this section may be given *nunc pro tunc*, when the trustees have proceeded in good faith and in ignorance of the statutory requirement. Atty.-Gen. Rep. (1896) 193.

§ 241. Requirements as to mortgage loans; abstract of title or title policy; insurance of buildings; recording.

1. In all cases of loans upon real property, a bond secured by a mortgage of the real estate upon which the loan is made, together with a complete abstract of title to such real estate, signed by the person or corporation furnishing such abstract of title, or a policy of title insurance of a title company authorized to insure titles to real estate in the state of New York, shall be required of the borrower.

2. Whenever buildings are included in the valuation of any real property upon which a loan shall be made by a savings bank, they shall be insured by the mortgagor in such company or companies as the savings bank shall direct, and the policy of insurance shall be duly assigned to the savings bank, or the loss made payable to the savings bank, as its interest may appear; and any such savings bank may renew such policy of insurance in the same or such other company or companies as it may elect, from year to year, or for a longer or shorter term, in case the mortgagor shall neglect to do so, and may charge the amount paid to the mortgagor. All the necessary charges and expenses paid by the savings bank for such renewal or renewals shall be paid by the mortgagor to the savings bank and shall be a lien upon the property mortgaged, recoverable with interest from the time of payment as part of the moneys secured to be paid by the mortgage.

3. Every mortgage and every assignment of a mortgage taken or held by a savings bank shall immediately be recorded in the office of the proper recording officer of the county in which the real property described in the mortgage is located.

Source.—Former §§ 150, 151, 27 subd. 3.

Subdivision 1 is taken from the second sentence of former § 150; the provisions as to abstract of title and policy of title insurance are new.

Subdivision 2 is taken from former § 151 without substantial change.

Subdivision 3 is taken from former § 27, subd. 3, without substantial change.

The provisions of former § 150 that "all expenses of searches, examinations and certificates of title, and of drawing, perfecting and recording papers, shall be paid by the borrower," have been omitted from the present section because subd. 1 now requires the borrower to furnish an abstract of title or policy of title insurance, and § 265, subd. 3, authorizes the savings bank to require the borrower to pay "all expenses of searches, examinations and cer-

tificates of title, including the drawing, perfecting and recording of papers," and empowers the attorney for the savings bank to collect of the borrower and retain for his own use the usual fees for such services.

CROSS-REFERENCES.—Recording deeds, see § 240.

Attorney's fees and expenses connected with mortgage loans, see § 265, subd. 3, and note.

INSURANCE.—While a savings bank making a loan upon mortgage has the right to insist, by virtue of this section, that the mortgagor cancel his existing insurance policies upon the property and procure insurance in a company designated by the bank's directors, the right may be waived. The right having been waived, the bank cannot thereafter procure additional insurance at the mortgagor's expense in the absence of any new reason therefor. *Heal v. Richmond County Sav. Bank*, 127 App. Div. 428, aff'd in 196 N. Y. 549.

MORTGAGE TAX.—The tax on mortgages (Tax Law, Art. II) is not a part of the "expenses * * * of recording papers" which former section 150 imposed upon the borrower. The mortgagee, even though a savings bank, is primarily liable to pay the tax. *Atty.-Gen. Rep. (1906) 504; Atty.-Gen. Rep. (1906) 507.*

§ 242. Restrictions on dealing in commodities or in exchange, gold or silver.

1. A savings bank shall not purchase, deal or trade in any goods, wares, merchandise or commodities whatever, except such personal property as may be necessary for the transaction of its authorized business.

2. A savings bank shall not, nor shall any officer thereof in his regular attendance upon the business of the savings bank, in any manner buy or sell exchange, gold or silver, except as authorized by subdivision four and seven of section two hundred thirty-eight of this article.

Source.—Former § 152.

Amended by L. 1915, Chap. 372. In effect May 1, 1915.

The amendment of 1915 added the words "four and" in subd. 2.

§ 243. Restrictions on borrowing money, pledging securities and issuing certificates of deposit.

A savings bank shall not

1. Borrow money, or pledge or hypothecate any of its securities as collateral for the repayment of money borrowed, except with the written approval of the superintendent of banks and in pursuance of a resolution adopted by a vote of a majority of its board of trustees duly entered upon their minutes, whereon shall be recorded by ayes and nays the vote of each trustee.

2. Make or issue any certificate of deposit payable either on demand or at a fixed day.

Source.—Former § 152, second and third sentences.

CROSS REFERENCE.—For power to borrow money and pledge securities, see § 238, subd. 5.

PLEDGE TO SECURE DEPOSITS.—The pledge of securities by a savings bank to secure deposits made by a postal savings bank or deposits of court funds would amount to a preference of the deposits to the amount of the securities. Such a pledge is contrary to the spirit of Article VI (former Art. IV) of the Banking Law and is not within the exception of the prohibition against borrowing money or pledging or hypothecating securities, except with the written approval of the Superintendent of Banks, etc. Atty.-Gen. Rep. (1912) vol 2, p. 500.

§ 244. Restrictions on deposit of savings bank's funds.

No savings bank shall deposit any of its funds with any other moneyed corporation unless the latter has been designated as a depository for the savings bank's funds by vote of a majority of the trustees of the savings bank exclusive of any trustee who is an officer, director or trustee of the depository so designated.

Source.—Former § 27, subd. 5.

Further restrictions on deposits are found in § 251 relating to the "available fund." In designating a depository under § 244 the trustees should strictly conform to the provisions of § 251.

CROSS-REFERENCES.—Deposit of available fund, see § 251; preference of deposits, see § 278.

Similar provision as to banks, see § 111; as to trust companies, see § 196; as to investment companies, see § 294.

§ 245. Restrictions as to place of business; branch offices.

1. A savings bank shall not do business or be located in the same room with or in a room connecting with any bank, trust company or national banking association; unless it be a savings bank lawfully so doing business or lawfully so located when this act takes effect.

2. No savings bank, or any officer or director thereof, shall transact its usual business at any place other than its principal place of business, except that it may, providing the merger agreement so provides, continue to occupy and maintain as a branch office, the place of business occupied and maintained at the time of merger by any savings bank which it has received into itself by merger pursuant to article twelve of this chapter.

Source.—Former § 27, subd. 11, is the source of subd. 1. The provisions of subd. 2 are new.

The prohibitions of subd. 1 (former § 27, subd. 11) were doubtless intended to prevent confusion of the business of banking institutions thus closely connected and to preclude access by the officers and employees of one institution to the moneys of the other. Thus where a bank and a savings bank did business in the same room and received money over the same counter, and the cashier of the bank, who was the treasurer of the savings bank, misappropriated money delivered to him for the savings bank, the bank was held liable. *Fishkill Savings Inst. v. Bostwick*, 92 N. Y. 564. See also *Kelley v. Chenango Valley Sav. Bank*, 22 App. Div. 202.

CROSS-REFERENCE.—Subdivision 1.—Similar provisions relating to private bankers, see § 171, and note thereunder.

§ 246. Restrictions as to entries in books; amortization of securities.

1. No saving bank shall by any system of accounting or any device of bookkeeping, directly or indirectly enter any of its assets upon its books in the name of any other individual, partnership, unincorporated association or corporation, or under any title or designation that is not truly descriptive thereof.

2. The stocks, bonds, promissory notes or other interest-bearing obligations purchased by a savings bank shall not be entered on its books at more than the actual cost thereof, and shall not thereafter be carried upon the books for a longer period than until the next declaration of dividends, or in any event for more than one year, at a valuation exceeding their present cost as determined by amortization, that is, by deducting from the cost of any such stock or security purchased for a sum in excess of the amount payable thereon at maturity, and charging to profit and loss, a sufficient sum to bring it to par at maturity, or adding to the cost of any such stock or security purchased at less than the amount payable thereon at maturity, and crediting to profit and loss, a sufficient sum to bring it to par at maturity.

3. No savings bank shall enter or at any time carry on its books the real estate and the building or buildings thereon, used by it as its place of business, at a valuation exceeding their actual cost to such savings bank.

4. Every savings bank shall, moreover, conform its methods of keeping its books and records to such orders in respect thereto as shall have been made and promulgated by the superintendent of banks pursuant to section fifty-six of this chapter. Any sav-

ings bank that refuses or neglects to obey any such order shall be subject to a penalty of one hundred dollars for each day it so refuses or neglects.

Source.—Subdivisions 1, 2 and 3 are new. Subdivision 4 is derived from former § 8.

CROSS-REFERENCES.—For similar restrictions on other corporations doing business under the Banking Law, see § 109, relating to banks, and the cross-references there given.

§ 247. Restrictions on amount of deposits; refusal or return of deposits.

1. The aggregate amount of deposits to the credit of any individual at any time, including in such aggregate all deposits credited to him as trustee or beneficiary of a voluntary and revokable trust and all deposits credited to him and another or others in either joint or several form, shall not exceed three thousand dollars, exclusive of dividends, and exclusive also of deposits arising from judicial sales or trust funds standing in his name as executor, administrator or trustee named in a will or appointed by a court of competent jurisdiction, provided a certified copy of the will, judgment, order or decree of the court authorizing such deposits or appointing such executor, administrator or trustee is filed with the savings bank; and exclusive, also, of trust funds and deposits credited to an individual and another or others in either joint or several form, received and credited by the savings bank prior to July first, nineteen hundred thirteen. Additional accounts may, however, be maintained in the name of a parent as trustee for a dependent or minor child and in the name of a child as trustee for a dependent parent, provided, however, that not more than two hundred and fifty dollars shall be deposited to any such account during any six months period.

2. The aggregate amount of deposits to the credit of any society or corporation at any time, shall not exceed five thousand dollars, exclusive of dividends, unless such deposit has been made pursuant to a judgment, order or decree of a court of record and a certified copy of the judgment, order or decree is filed with the savings bank.

3. Every savings bank may further limit the aggregate amount which an individual or any corporation or society may deposit, to

such sum as it may deem expedient to receive; and may, in its discretion, refuse to receive a deposit or at any time return all or any part of any deposit.

Source.—Former § 143.

The provisions of subd. 1, making the \$3,000 limitation include trust deposits and joint deposits, are new; they are confirmatory of opinions of the Attorney-General (Atty.-Gen. Rep. [1912] Vol. 2, p. 555; Atty.-Gen. Rep. [1913] p. 35). The words "exclusive of dividends" are new. All of subd. 1 beginning with the words "standing in his name as executor," and the requirement of subd. 2, that a certified copy of the judgment, etc., be filed, are new. The exception in former § 143 of deposits made prior to May 17, 1875, is omitted. Subdivision 3 is taken from the third sentence of former § 143.

CROSS-REFERENCES.—General powers as to receiving and repaying deposits, see §§ 2, 238.

Repayment of deposits regulated, see §§ 248, 249.

CONTRACT NOT VOID.—An individual whose deposit exceeds \$3,000 may recover from the bank the full amount of the deposit. The contract between the bank and the depositor is not made void by the statute. *Taylor v. Empire State Sav. Bank*, 66 Hun 538.

INTEREST ON EXCESS.—Under former statutes imposing a limitation upon deposits (Laws of 1882, Ch. 409, § 290, as amended by Laws of 1885, Ch. 477), if the deposit exceeded the maximum amount no interest thereon could be allowed or recovered. *Taylor v. Empire State Sav. Bank*, 66 Hun 538.

INCLUDES TRUST DEPOSITS.—This limitation includes deposits made by an individual in trust for another, as long as the trustee has the power to withdraw the money; and it makes no difference that the trust accounts are made in alternation, as "A in trust for B" and "B in trust for A." If, however, it is made to appear that the trust has become irrevocable by delivery of the pass-book to the beneficiary or by notice to him, he, and not the trustee, is chargeable with the deposit. Atty.-Gen. Rep. (1913) 35.

This conclusion remains unaffected by the new provisions of subd. 1.

§ 248. Regulations and restrictions as to repayment of deposits; pass-books.

1. The sums deposited with any savings bank, together with any dividends credited thereto, shall be repaid to the depositors thereof respectively, or to their legal representatives, after demand, in such manner and at such times, and under such regulations, as the board of trustees shall prescribe, subject to the provisions of this and the next following section. Such regulations shall be

posted in a conspicuous place in the room where the business of such savings bank shall be transacted, and shall be printed in the passbooks or other evidences of deposit furnished by it, and shall be evidence between such savings bank and the depositors holding the same, of the terms upon which the deposits therein acknowledged are made.

The savings bank may at any time by a resolution of its board of trustees require a notice of sixty days before repaying deposits, in which event no deposit shall be due or payable until sixty days after notice of intention to withdraw the same shall have been personally given by the depositor, and such deposits, if not withdrawn within fifteen days after the expiration of the sixty days' notice, shall not then be due or payable under such notice or by reason thereof.

Nothing herein contained, however, shall be construed as impairing contracts heretofore made between savings banks and their depositors as to notice of withdrawal, or as prohibiting any savings bank from making payments of deposits before the expiration of said sixty day notice.

But no savings bank shall hereafter agree with its depositors in advance to waive said sixty days' notice nor shall it in the case of deposits hereafter made require a longer notice than the sixty days aforesaid.

2. Except as provided in subdivision three of this section, a savings bank shall not pay any dividend or deposit, or portion of a deposit, or any check drawn upon it by a depositor, unless the pass-book of the depositor be produced, and the proper entry be made therein at the time of the payment.

3. The board of trustees of any savings bank may by its by-laws, provide for making payments in cases of loss of pass-book, or other exceptional cases where the pass-books cannot be produced without loss or serious inconvenience to depositors, the right to make such payments to cease when so directed by the superintendent of banks, upon his being satisfied that such right is being improperly exercised by such savings bank; but payments may be made upon the judgment or order of a court.

4. If any person shall die leaving in a savings bank an account on which the balance due him shall not exceed two hundred and fifty dollars, and no executor of his last will and testament or no

administrator of his estate shall be appointed, the savings bank may in its discretion pay the balance of his account to his widow (or if the decedent was a married woman, to her surviving husband), next of kin, funeral director or other creditor who may appear to be entitled thereto. As a condition of such payment the savings bank may require proof by affidavit as to the parties in interest, the filing of proper waivers, the execution of a bond of indemnity, with sureties, by the person to whom the payment is to be made, and a proper receipt and acquittance for such payment. For any such payment made pursuant to this subdivision the savings bank shall not be held liable to the decedent's executor or administrator thereafter appointed, unless the payment shall have been made within one year after the decedent's death and an action to recover the amount shall have been commenced within one year after the date of payment.

Source.—Former §§ 143, 152. The second, third and fourth paragraphs of subdiv. 1 and all of subdiv. 4 are new.

Amended by L. 1916, chap. 164. In effect Apr. 7, 1916.

CROSS-REFERENCES.—Repayment of deposits of minors, trust deposits and joint deposits, see § 249.

General power to receive deposits, see §§ 2, 238.

Restrictions on amount of deposits, see § 247.

Power to enact by-laws as to repayment of deposits, see § 262.

Deposits as assets of deceased depositor's estate, see Code Civ. Proc., § 2712.

DEPOSITORS ARE CREDITORS.—The relation of a depositor in a savings bank to the corporation is that of a creditor. *People v. Mechanics' & Traders' Sav. Inst.*, 92 N. Y. 7, rev'g 28 Hun 375; *Mierke v. Jefferson County Savings Bank*, 208 N. Y. 347.

DEPOSITORS AND OTHER CREDITORS SHARE RATABLY UPON INSOLVENCY.—Upon the insolvency of a savings bank the assets of the corporation become a trust fund for its creditors. Depositors stand upon the same basis as other creditors, and share ratably with them and with each other in receiving payment from the insolvent estate. *People v. Mechanics' & Traders' Sav. Inst.*, 92 N. Y. 7, rev'g 28 Hun 375; *People v. Ulster County Savings Bank*, 64 Hun 434, aff'd in 133 N. Y. 689, on opinion below.

A judgment obtained by a general creditor of a savings bank against its receiver in an action that was pending when the receiver was appointed, is not entitled to a preference over depositors. *People v. Mechanics' & Traders' Sav. Inst.*, 92 N. Y. 7, rev'g 28 Hun 375.

DEPOSIT IN NAME OTHER THAN DEPOSITOR'S.—A person may deposit his money in the names of others or in the names of fictitious persons, without impairing his title to the deposits. *Washington v. Bank for Savings*, 171 N. Y. 166, aff'g 65 App. Div. 338; *Roughan v. Chenango Valley Sav. Bank*, 158 App. Div. 786.

Deposits of depositor's own money in the names of third persons without

their knowledge, the intent being that they should take only if they should survive the depositor, no notice being given to them and the depositor retaining the pass-books; held, after the death of said third persons, to belong to the depositor. *Held* also that the depositor need not administer the estates of said persons in order to recover the deposits. *Roughan v. Chenango Valley Sav. Bank*, 158 App. Div. 786.

RULES OF BANK.—*In the absence of any rules or regulations* assented to by its customers, a savings bank is governed by the same legal principles that apply to other moneyed institutions with respect to payment of deposits. *Allen v. Williamsburgh Sav. Bank*, 69 N. Y. 314.

Questions involving the relations of a savings bank to its depositors and arising outside of the rules and regulations adopted by the bank pursuant to the statute must be determined by "broad and comprehensive legal rules of general application." *Kelley v. Buffalo Sav. Bank*, 180 N. Y. 171, 177, rev'g 88 App. Div. 374.

The court will not, unless for substantial reasons, interfere with reasonable rules made by a savings bank, pursuant to statute, for the regulation of its business. *Rosenthal v. Dollar Sav. Bank*, 61 Misc. 244.

See "Effect of By-Laws and Rules" (*infra*).

DEATH OF DEPOSITOR.—The following decisions under the former law should be read in connection with subdiv. 4 of the present section.

Upon the death of a depositor the savings bank remains indebted to his estate in the amount of his deposit, and is bound to make payment to his executor or administrator. *Boone v. Citizens' Sav. Bank*, 84 N. Y. 83; *Mierke v. Jefferson County Sav. Bank*, 208 N. Y. 347.

When a depositor in a savings bank has died but the bank has no notice of his death, and a third person presents the depositor's pass-book and a draft purporting to bear his signature, the bank does not act at its peril in paying out money to that person, but its duty is to use ordinary care according to the special circumstances of the case. *Kelley v. Buffalo Sav. Bank*, 180 N. Y. 171, rev'g 88 App. Div. 374. See also *Hayden v. Brooklyn Sav. Bank*, 15 Abb. Pr. N. S. 297.

It has been said that a by-law of a savings bank providing (as in former § 143, now subd. 1 of § 248) that upon the death of a depositor his deposit shall be paid to his legal representatives, puts upon the bank the duty of ascertaining at its peril who is entitled to the money upon the depositor's death. *Farmer v. Manhattan Sav. Inst.*, 60 Hun 462, 465; *Podmore v. South Brooklyn Sav. Inst.*, 48 App. Div. 218; *Mahon v. South Brooklyn Sav. Inst.*, 175 N. Y. 69.

That rule, however, is too broad and is not one of general application. *Kelley v. Buffalo Sav. Bank*, 180 N. Y. 171.

A by-law of a savings bank providing that upon a depositor's death his deposit shall be paid to his legal representatives, is designed for the protection of the depositor who can no longer protect himself. A by-law providing that although the bank will endeavor to prevent frauds all payments made to persons producing the pass-book shall be valid payments to discharge the bank, is designed for the protection of the bank. These two by-laws must be read together. Hence, when the bank has notice of a depositor's death it acts at its peril in paying the deposit to a person who claims the money under an alleged gift *causa mortis*. *Mahon v. South Brooklyn Sav. Inst.*, 175 N. Y. 69 (as limited by *Kelley v. Buffalo Sav. Bank*, 180 N. Y. 171).

If the bank has no notice of the depositor's death, its duty, under such rules, in paying out money to a third person who presents the decedent's pass-book and a draft purporting to bear his signature, is measured by the rule of ordinary care, to be applied according to the circumstances of the particular case. *Kelley v. Buffalo Sav. Bank*, 180 N. Y. 171, rev'g 88 App. Div. 374, and limiting *Mahon v. South Brooklyn Sav. Inst.*, 175 N. Y. 69.

When a depositor makes a valid parol gift of his deposit and then dies, the donee becomes his "legal representative" within the meaning of a by-law of the bank providing that upon the death of a depositor the deposit shall be paid to his or her legal representatives upon presentation of the pass-book, and the donee may recover the deposit from the bank without having an administrator of the donor appointed. *Casgriff v. Hudson City Sav. Inst.*, 24 Misc. 4.

PAYMENT TO FOREIGN ADMINISTRATOR.—A savings bank is protected in paying in good faith a deposit of a non-resident to the latter's administrator appointed in the state of the deceased depositor's domicile; the fact that an administrator had been appointed in this state before the payment does not affect the validity of the payment if the bank had no actual notice of the appointment; sufficient notice thereof is not afforded by the record of the appointment in the surrogate's office. *Maas v. German Sav. Bank*, 176 N. Y. 377, aff'g 73 App. Div. 524.

PASS-BOOKS.—The pass-book issued by a savings bank to a depositor is not a negotiable instrument, and mere possession thereof does not constitute proof of the right of the holder to draw money thereon. *Allen v. Williamsburgh Sav. Bank*, 69 N. Y. 314, 319; *Smith v. Brooklyn Sav. Bank*, 101 N. Y. 58; *Kummel v. Germania Sav. Bank*, 127 N. Y. 488. See also *Wall v. Emigrant Industrial Sav. Bank*, 64 Hun 249, 254.

The provision of the Banking Law that no savings bank shall pay any deposit unless the pass-book of the depositor shall be produced and the proper entry made therein, does not make the production of the pass-book an arbitrary condition which must at all hazards be complied with, and a depositor is entitled to receive his money where circumstances render the production of the book impossible, for the rule is to protect the bank against the payment of deposits to others than those entitled thereto and the reasonableness of the excuse for not producing the book must be determined in the light of this purpose. *Meighan v. Emigrant Industrial Sav. Bank*, 168 App. Div. 542.

To protect a savings bank in paying a deposit to a third person on mere presentation of a pass-book, there must be a contract between the depositor and the bank clearly authorizing such payment, and the power will not be inferred from loose or doubtful language in a rule or by-law of the bank. *Smith v. Brooklyn Sav. Bank*, 101 N. Y. 58.

Attorney-General Jackson advised the Superintendent of Banks that he might properly decline to approve a by-law of a savings bank making the unqualified provision that "All payments made to persons producing the pass-book of a depositor issued by this bank shall be valid payments to discharge the bank of all liability." In his opinion it would be contrary to public policy to protect a bank in paying a deposit to a person whose only evidence of right to the deposit is the possession of a pass-book which might have been obtained by theft or fraud. *Atty-Gen. Rep.* (1908) 395.

A depositor may assign and transfer his interest in his deposit without the

delivery of his pass-book; and the assignment becomes effective when it is accepted and acted upon by the bank. A rule or regulation of the bank requiring the assignee to present the pass-book is waived when the bank gives effect to the assignment and notifies the parties that presentation of the pass-book is unnecessary. *Augsbury v. Shurtliff*, 114 App. Div. 626, aff'd in 190 N. Y. 507.

Where an account was payable to either father or son "or the survivor of them," and, after the father's death, his executor held the pass-book claiming that the deposit belonged to the decedent's estate, it was held that, as the bank could not make payment to the son without the production of the pass-book, the executor should be joined as a co-defendant in an action by the son against the bank to recover the deposit. *Waterman v. Albany City Sav. Inst.*, 86 Misc. 274.

EFFECT OF BY-LAWS AND RULES.—By-laws or rules of a savings bank printed in the pass-book accepted and used by a depositor constitute a contract between the depositor and the bank, binding upon both. *Warhus v. Bowery Sav. Bank*, 21 N. Y. 543; *Appleby v. Erie County Sav. Bank*, 62 N. Y. 12; *Allen v. Williamsburgh Sav. Bank*, 69 N. Y. 314; *Mitchell v. Home Sav. Bank*, 38 Hun 255; *Wilcox v. Onondaga County Sav. Bank*, 40 Hun 297; *Kelley v. Chenango Valley Sav. Bank*, 22 App. Div. 202; *Winter v. Williamsburgh Sav. Bank*, 68 App. Div. 193; *Rosenthal v. Dollar Sav. Bank*, 61 Misc. 244; *Israel v. Bowery Sav. Bank*, 9 Daly 507. See also *Schoenwald v. Metropolitan Sav. Bank*, 57 N. Y. 418; *Boone v. Citizens Sav. Bank*, 84 N. Y. 83; *Riley v. Albany Sav. Bank*, 36 Hun 513, aff'd in 103 N. Y. 669; *Campbell v. Schenectady Sav. Bank*, 114 App. Div. 337.

But a provision in such by-laws printed in the pass-book and designed to protect the bank against liability for paying out a deposit on presentation of the pass-book by the wrong person, does not absolve the officers of the bank from the duty to exercise care and diligence to protect the depositor against fraud, or relieve the bank from liability for their negligence. *Kummel v. Germania Sav. Bank*, 127 N. Y. 488; *Gearns v. Bowery Sav. Bank*, 135 N. Y. 557; *Kelley v. Buffalo Sav. Bank*, 180 N. Y. 171; *Campbell v. Schenectady Sav. Bank*, 114 App. Div. 337. See also *Smith v. Brooklyn Sav. Bank*, 101 N. Y. 58; *Wall v. Emigrant Industrial Sav. Bank*, 64 Hun 249; *Abramowitz v. Citizens Sav. Bank*, 17 Misc. 297.

A by-law printed in the pass-book that although the bank will endeavor to prevent frauds upon its depositors, yet all payments to persons producing pass-books issued by the bank shall be valid payments to discharge the bank, is in effect an undertaking by the bank to use ordinary care not to pay to others than the depositor, but saving itself harmless in case the pass-book is produced by some one not the owner and payment is made to him without negligence. *Schoenwald v. Metropolitan Sav. Bank*, 57 N. Y. 418; *Appleby v. Erie County Sav. Bank*, 62 N. Y. 12; *Wilcox v. Onondaga County Sav. Bank*, 40 Hun 297; *Hayden v. Brooklyn Sav. Bank*, 15 Abb. Pr. N. S. 297; *Kelley v. Buffalo Sav. Bank*, 180 N. Y. 171; *Campbell v. Schenectady Sav. Bank*, 114 App. Div. 337.

When such a by-law provides that the bank "will use its best efforts to prevent fraud," the duty of the bank officers with respect to paying a deposit to the right person is not limited by ordinary care and diligence. *Allen v. Williamsburgh Sav. Bank*, 69 N. Y. 314.

A clerk of a savings bank whose duties are to receive deposits, give pass-books therefor and enter the money to the credit of the depositors, has no

implied or apparent authority to make any agreement with respect to withdrawal of a deposit, in addition to, or in conflict with, the regulations printed in the pass-book. *Riley v. Albany Sav. Bank*, 36 Hun 513, aff'd in 103 N. Y. 669.

A by-law providing that deposits can be withdrawn at certain dates upon one month's previous notice, is waived when the bank unqualifiedly refuses to pay and bases its refusal on other grounds. *Riley v. Albany Sav. Bank*, 36 Hun 513, aff'd in 103 N. Y. 669. See also *Abramowitz v. Citizens' Sav. Bank*, 17 Misc. 297.

The relation of debtor and creditor exists between the bank and the depositor, and the bank cannot enforce rules which, in effect, make the deposit non-assignable. Where a depositor assigns his account, the bank cannot justify its refusal to pay the assign by a rule requiring the depositor to appear in person to withdraw his account. *Bank of U. S. v. Public Bank*, 151 N. Y. Supp. 26.

LOSS OF PASS-BOOK.—A by-law providing that when a pass-book is lost the bank will decide as to the person to whom payment shall be made, does not justify the bank in refusing to make payment to the depositor when for several years the bank has had knowledge of the loss of the pass-book and no third person has made any claim to the deposit. *Mills v. Albany Exchange Sav. Bank*, 28 Misc. 251.

When the pass-book is not produced, an action to recover the deposit cannot be maintained without evidence that the book is lost, if objection is made on that ground. *Warhus v. Bowery Sav. Bank*, 21 N. Y. 543.

By-laws of a savings bank providing that no money can be withdrawn except on production of the pass-book, and that if the pass-book be lost immediate notice in writing shall be given to the bank, are waived when the bank is promptly and repeatedly informed of the loss of a pass-book, but does not intimate any desire for written notice and bases its refusal to pay upon other grounds. *Mierke v. Jefferson County Sav. Bank*, 208 N. Y. 347. See also *Kenny v. Harlem Sav. Bank*, 65 Misc. 466, rev'g 61 Misc. 144.

INDEMNITY WHEN PASS-BOOK IS LOST.—In the absence of an appropriate by-law, a savings bank cannot lawfully require a bond of indemnity from a depositor as a condition of paying a deposit when the pass-book has been lost; and the depositor's failure to furnish such a bond is no defense to an action to recover the deposit. *Mierke v. Jefferson County Sav. Bank*, 208 N. Y. 347; *Mills v. Albany Exchange Sav. Bank*, 28 Misc. 251; *Roughan v. Chenango Valley Sav. Bank*, 158 App. Div. 786.

§ 249. Repayment of deposits of minors, trust deposits and joint deposits.

1. When any deposit shall be made by or in the name of any minor, the same shall be held for the exclusive right and benefit of such minor, and free from the control or lien of all other persons, except creditors, and shall be paid, together with the dividends thereon, to the person in whose name the deposit shall have been made, and the receipt or acquittance of such minor shall be a valid and sufficient release and discharge to such savings bank for such deposit or any part thereof.

2. When any deposit shall be made by any person in trust for another, and no other or further notice of the existence and terms of a legal and valid trust shall have been given in writing to such savings bank, in the event of the death of the trustee, the deposit or any part thereof, together with the dividends thereon, may be paid to the person for whom the deposit was made.

3. When a deposit shall be made by any person in the names of such depositor and another person and in form to be paid to either or the survivor of them, such deposit and any additions thereto made by either of such persons after the making thereof, shall become the property of such persons as joint tenants, and the same together with all dividends thereon shall be held for the exclusive use of such persons and may be paid to either during the lifetime of both or to the survivor after the death of one of them, and such payment and the receipt or acquittance of the one to whom such payment is made shall be a valid and sufficient release and discharge to such savings bank for all payments made on account of such deposit prior to the receipt by such savings bank of notice in writing not to pay such deposit in accordance with the terms thereof. The making of the deposit in such form shall, in the absence of fraud or undue influence, be conclusive evidence, in any action or proceeding to which either such savings bank or the surviving depositor is a party, of the intention of both depositors to vest title to such deposit and the additions thereto in such survivor.

Source.—Former § 144. The last sentence of subdiv. 3 is new.

CROSS-REFERENCES.—Similar provision as to banks, see § 148; as to trust companies, see § 198.

Restrictions on amount of trust deposits and joint deposits, see § 247, subd. 1.

Power to enact by-laws as to repayment of deposits, see § 262.

DEPOSITS IN TRUST.—The provisions now embraced in subdiv. 2 with respect to deposits in trust were apparently intended to relieve the bank from the consequences of the uncertainty resulting from decisions that the form of the deposit alone was not conclusive as to the intent of the depositor to create a trust. See *Cunningham v. Davenport*, 147 N. Y. 43; *Matter of Totten*, 179 N. Y. 112, 119; *Garvey v. Clifford*, 144 App. Div. 193.

The death of the *cestui que trust* during the life of the depositor revokes the tentative trust created by such deposit. In *re Thompson's Estate*, 85 Misc. 291.

When a person deposits his own money in trust for another, thus constituting himself a trustee, the beneficiary cannot compel the bank to pay the deposit to him if the trustee is alive and does not consent and is not a party to the action; and it makes no difference that the trustee has disappeared. *Hemmerich v. Union Dime Savings Bank*, 144 App. Div. 413.

"Although the facts may show an absolute gift or irrevocable trust as between donor and donee, we think that a bank, in which the moneys involved are deposited, should not be bound thereby until it has proper notice of the termination of the trust by the death of the donee or the donor or by some direct notice by the donor during his or her lifetime. Until the happening of some such event the bank should not be required to recognize the right of any one to exercise dominion over or withdraw the deposit except the person with whom it made the contract of deposit." *Hemmerich v. Union Dime Sav. Inst.*, 144 App. Div. 413, 418.

The provisions of subdiv. 2 apparently settle a disputed question. It was formerly held that when a deposit was made in trust for another and the trustee died, the bank was bound to make payment to the trustee's administrator upon production of his letters and the pass-book, and was protected in making payment to him unless the beneficiary asserted a right to receive the deposit—that until the beneficiary made such claim the bank owed no duty to him and had no right to inquire into the character of the trust. *Boone v. Citizens' Sav. Bank*, 84 N. Y. 83. On the other hand, it was held that after the death of both trustee and beneficiary the bank was protected, in the absence of demand by the trustee's administrator, in paying the deposit to the administrator of the beneficiary—a decision in harmony with the present statute. *Bishop v. Seaman's Bank for Savings*, 33 App. Div. 181.

When a person creates an irrevocable trust in a deposit and the beneficiary dies leaving a will bequeathing the deposit and appointing the legatee executor, the latter is entitled to recover the deposit from the bank, the trustee being made a party to the action. *Whitfield v. Greenwich Sav. Bank*, 4 Month. L. Bull. 69 (Super. Ct.).

Where a husband deposits money in a savings bank in his own name in trust for his wife, the wife cannot maintain an action at law against the bank to recover the deposit. *Herpe v. Herpe*, 89 Misc. 142.

DEPOSITS IN TRUST FOR FICTITIOUS PERSONS belong to the depositor. *Washington v. Bank for Savings*, 171 N. Y. 166, aff'd 65 App. Div. 388.

JOINT DEPOSITS.—The provisions of subd. 3 (except the last sentence which is new) were added to the statute by chapter 247 of the Laws of 1907. The subdivision does not govern accounts opened before its provisions were enacted. *Berg v. Keber*, 78 Misc. 468, 472; *Bonnette v. Molloy*, 153 App. Div. 73, modified on a point of practice in 209 N. Y. 167.

The language of subd. 3 was intended to do away with the uncertainty attendant upon the rule that a deposit in joint form was not conclusive as to the depositor's intent, and to protect the bank in making payment to either person named or the survivor. See *Clary v. Fitzgerald*, 155 App. Div. 659; *Schneider v. Schneider* (No. 1), 122 App. Div. 774; *Kelly v. Beers*, 194 N. Y. 40, 55; *Bonnette v. Molloy*, 153 App. Div. 73, 75-6, modified on a point of practice in 209 N. Y. 167; *Berg v. Keber*, 78 Misc. 468; *West v. McCullough*, 123 App. Div. 846, aff'd in 194 N. Y. 518; *Bradt v. Bradt*, 143 App. Div. 863.

Even before the last sentence of subd. 3 was added it was held that the effect of these provisions is not merely to protect the bank, and that the single fact, unexplained by other competent evidence, that a deposit is made in the form mentioned in the statute "fixes the respective rights of the depositors named as joint owners of the property with all the incidents attaching to such ownership." *Clary v. Fitzgerald*, 155 App. Div. 659, 663-664.

The omission of the words "or the survivor of them" does not conclusively show absence of intent to create a joint tenancy with survivorship. Evidence

is admissible to show the intent of the depositors. *Corcoran v. Hotaling*, 164 App. Div. 75.

The fact that the deposit is entered in form to the credit of A "or" B with words of survivorship, does not change the effect of the deposit as being in the names of both. A deposit in that form is within the meaning of the statute, and presumptively, at least, the deposit becomes the property of the persons named, as joint owners. *Clary v. Fitzgerald*, 155 App. Div. 659.

It was held, however, that the statute did not preclude the depositors or their representatives, as between themselves, from showing by other competent evidence that title as joint owners was not intended or established. *Clary v. Fitzgerald*, 155 App. Div. 659; *Anson v. Savings Bank of Utica*, 155 App. Div. 939.

This rule is now changed by the last sentence of subd. 3.

The provisions of subd. 3 apparently do not extend to a case where a deposit is made in the name of the depositor "or" another without words of survivorship, the money deposited belonging solely to the depositor. A deposit in that form does not give rise to any inference of a transfer or gift by the depositor to the other person named (*Matter of Bolin*, 136 N. Y. 177; *Grafing v. Irving Sav. Inst.*, 69 App. Div. 566, 570); it does not create a trust or constitute the parties joint owners of the deposit (*Grafing v. Irving Sav. Inst.*, *supra*), and upon the death of the depositor the bank is protected in making payment to his executor who produces the pass-book, in the absence of any demand by the other party (*Grafing v. Irving Sav. Inst.*, *supra*). So where the deposit thus entered is made up of contributions by each, and the form of deposit was used so that each should have the right to draw the money, the interests of the parties as between themselves are several, not joint, and upon the death of one the bank is not justified in paying the entire deposit to his executor or administrator against the protest and claim of the survivor, but is liable to pay to the survivor the amount which as between the parties belongs to him; and this is true although the decedent's executor or administrator presents the pass-book and the rules of the bank provide that all payments to persons producing pass-books shall be valid payments to discharge the bank (*Mulcahey v. Emigrant Industrial Sav. Bank*, 89 N. Y. 435).

The joint tenancy is created at the time the deposit is made and is not "made in contemplation of the death * * * or intended to take effect in possession or enjoyment at or after such death" within the meaning of the Tax Law. *Matter of Tilley*, 166 App. Div. 240.

One of the joint tenants is not ousted from the tenancy through the withdrawal by the other joint tenant and deposit in another bank of part of the money. *In re Klenk*, 150 N. Y. Suppl. 365.

JOINT DEPOSIT BY MERGER OF ACCOUNTS.—When a husband and wife, having separate deposits in a savings bank, join in an instrument directing that their accounts be merged so as to run to either depositor "or the survivor of them," the instrument is an order which remains executory and revocable until it is presented to and acted upon by the bank. (*Augsbury v. Shurtliff*, 180 N. Y. 138.) But when the order is delivered to the bank and acted upon by it, before the death of either depositor, the transfer is effectual to vest in the survivor the title to the whole of the merged deposits. (*Augsbury v. Shurtliff*, 114 App. Div. 626, *aff'd* in 190 N. Y. 507.) In such a case it seems that presentation of the pass-books to the bank is not essential to complete the assignment or transfer of the funds into the joint account; at least, a rule or regulation which would require such presentation

may be waived by the bank in so far as it is made for the bank's protection. (*Augsbury v. Shurtliff*, 114 App. Div. 626, aff'd in 190 N. Y. 507.)

§ 250. Actions to recover deposits; interpleader; costs; statute of limitations.

1. In all actions against any savings bank to recover for moneys on deposit therewith, if there be any person or persons, not parties to the action, who claim the same fund, the court in which the action is pending, may, on the petition of such savings bank, and upon eight days' notice to the plaintiff and such claimants, and without proof as to the merits of the claim, make an order amending the proceedings in the action by making such claimants parties defendant thereto; and the court shall thereupon proceed to determine the rights and interests of the several parties to the action in and to such funds. The remedy provided in this section shall be in addition to and not exclusive of that provided in section eight hundred twenty of the code of civil procedure.

2. The funds on deposit which are the subject of such an action may remain with such savings bank to the credit of the action until final judgment therein, and be entitled to the same dividends as other deposits of the same class, and shall be paid by such savings bank in accordance with the final judgment of the court; or the deposit in controversy may be paid into court to await the final determination of the action, and when the deposit is so paid into court such savings bank shall be struck out as a party to the action, and its liability for such deposit shall cease.

3. The costs in all actions against a savings bank to recover deposits shall be in the discretion of the court, and may be charged upon the fund affected by the action.

4. When a savings bank shall have paid a deposit balance to any person and shall have closed such account on its books, any action against the savings bank to recover such deposit balance must be commenced within twenty years after the date of such payment. Except as otherwise provided in this section and in subdivision four of section two hundred and forty-eight of this article the statutes limiting the time within which actions may be commenced shall have no application to actions brought by depositors, their representatives or assigns against savings banks for deposits made therein.

Source.—Former § 145. In subdivision 1 the words “and without proof as to the merits of the claim,” and all of the last sentence, are new. The first sentence of subdivision 4 and the exceptions in the second sentence, are new. The first sentence of former § 145, relating to the competency of a wife as a witness in an action by her husband, has been omitted as unnecessary.

CROSS-REFERENCES.—Provisions similar to subdivisions 1, 2 and 3, as to banks, see § 113; as to trust companies, see § 199.

Interpleader by order, see Code Civ. Proc., § 820.

Interpleader by suit of debtor, see Code Civ. Proc., § 820-a.

Statutes of limitation made inapplicable by this section, see Code Civ. Proc., § 382, Subd. 1; § 410.

INTERPLEADER.—“The object of this statute is to relieve these savings banks from two or more litigations over the same deposit, with all the expenses attending to same, and danger of having to pay the deposit to two or more different persons. A recovery by one claimant would be no bar to a recovery of the same deposit by as many others as might severally claim the same.” *McGuire v. Auburn Sav. Bank*, 78 App. Div. 22, 26. See also *Gifford v. Oneida Sav. Bank*, 99 App. Div. 25, 27.

When a deposit is made in the names of two persons jointly and one of them sues the bank to recover the deposit, the bank may require the other to be made a party defendant. *McKeown v. Bank for Savings*, 26 Misc. 824.

The amendments embraced in subdivision 1 to the effect that the court may make an order amending the proceedings by making the claimants parties defendant “without proof as to the merits of the claim,” and that this remedy shall be in addition to that provided in Code Civ. Proc., § 820, were made to do away with conflicting and unsatisfactory decisions on the question whether the technical rules applicable to a proceeding under said section of the Code were applicable to a proceeding under this section (formerly § 145) of the Banking Law. See *Steiner v. East River Sav. Inst.*, 60 App. Div. 232, 235; *McGuire v. Auburn Sav. Bank*, 78 App. Div. 22; *Mahro v. Greenwich Sav. Bank*, 16 Misc. 537, 40 N. Y. Supp. 29 (reversing 16 Misc. 275, 38 N. Y. Supp. 126).

An application made under § 820 of the Code of Civil Procedure is governed, of course, by the rules applicable to that section. *Mars v. Albany Sav. Bank*, 64 Hun 424; *Steiner v. East River Sav. Inst.*, 60 App. Div. 232.

The provisions of the Banking Law do not apply to an action brought by the drawee of an unaccepted draft upon a savings bank. The statute is limited by its terms to actions for the recovery of money on deposit, and the drawing of a draft does not operate as an assignment of the funds in the hands of the drawee. *Master v. Bowery Sav. Bank*, 31 Misc. 178.

When a depositor in a savings bank gives by his will a life estate in all his real and personal property, with remainders over, and appoints the life tenant as executor, the remaindermen have only a future interest in the moneys of the estate and a claim by them against the bank is not such a

claim as is contemplated by this section. *Gifford v. Oneida Sav. Bank*, 99 App. Div. 25.

The fact that the defendant savings bank makes answer, merely to escape default, denying that the amount of the deposit claimed by plaintiff was the amount in its possession, does not affect the right of the bank to have a claimant brought in as a party defendant. *Quinn v. Bank for Savings*, 86 N. Y. Supp. 285.

In an action against a savings bank to recover the amount of a deposit standing in the name of a decedent, plaintiff claiming the deposit under an alleged gift, it is proper for the court to grant the bank's application to join as a party defendant the depositor's administrator who had previously made claim to the fund. *Quinn v. Bank for Savings*, 86 N. Y. Supp. 285.

An order adding a claimant as a party defendant or granting an interpleader under this section may properly require the pass-book to be surrendered to the clerk of the court pending the determination of the action. *Faivre v. Union Dime Sav. Inst.*, 49 Super. Ct. (27 J. & S.) 558, 13 N. Y. Supp. 423; *Quinn v. Bank for Savings*, 86 N. Y. Supp. 285.

The statute provides that the deposit which is the subject of the action may remain with the savings bank "to the credit of the action;" or in the alternative that it may be paid into court to await the final determination of the action. But see *McKeown v. Bank of Savings*, 26 Misc. 824.

The order of interpleader should not provide for the opening by defendant bank of a new account to the credit of the action. *Faivre v. Union Dime Sav. Inst.*, 59 Super. Ct. (27 J. & S.) 558, 13 N. Y. Supp. 423.

To justify an order adding parties defendant under this section it must appear that one or more persons other than plaintiff actually claim the deposit. It is not enough that other persons *may* claim it. So when the donee of a deceased depositor sues to recover the deposit, and the heirs and next of kin of the decedent are living and make no claim, the bank is not entitled to an order directing them to be made parties or requiring that an administrator be appointed. *Cogswell v. Hudson City Sav. Inst.*, 24 Misc. 4.

But an order of interpleader may be granted although the third party claims only part of the deposit. *Progressive Handlanger Union v. German Sav. Bank*, 23 Abb. N. C. 42.

When a deposit was made by A in the form "A in trust for B," and upon A's death his administrator sues the bank to recover the deposit, alleging that to the knowledge of the bank the name of B was fictitious and the money belonged solely to A, the bank is not entitled to an order making B, his next of kin, etc., parties defendant. Unless plaintiff can prove said allegations he must fail, for otherwise upon the death of the trustee the beneficiary might be entitled to the deposit; while if plaintiff does prove the allegations the bank will not require the relief asked. *Washington v. Seaman's Bank for Savings*, 29 Misc. 492.

An account was carried in the name of a father and his infant son "payable to either or the survivor of them." The father having died, an action was brought against the bank by the infant's guardian to recover the deposit, payment of which had been refused by reason of the guardian's inability to produce the pass-book, which was held by the father's executor, who claimed that the deposit belonged to the decedent's estate. It was held that the executor should be made a party defendant, but that the deposit should remain in the bank pending the decision of the controversy and the bank should not be struck out as a party to the action. *Waterman v. Albany City Sav. Inst.*, 86 Misc. 274.

§ 251. Available fund and purposes for which created.

The trustees of every savings bank shall as soon as practicable invest the moneys deposited with them in the securities described in section two hundred and thirty-nine of this article, except as hereinafter provided. For the purpose of paying withdrawals in excess of receipts and meeting current expenses, or for the purpose of awaiting a more favorable opportunity for judicious investment, any savings bank may keep on hand or on deposit in any bank in this state organized under any law of this state or of the United States, or with a trust company incorporated under any law of this state, an available fund not exceeding twenty per centum of the aggregate amount credited to its depositors, but the sum deposited by any savings bank in any one bank or trust company shall not exceed twenty-five per centum of the paid up capital and surplus of such bank or trust company, and no more than five per centum of the aggregate amount credited to the depositors of any savings bank shall be deposited in a bank or trust company of which a trustee of such savings bank is a director.

Source.—Former §§ 148, 149. The maximum amount of the fund is raised from ten to twenty per centum of the deposits and the provisions of former § 148 authorizing the loan of the fund and relating to the securities pledged for such a loan have been broadened and transferred to § 239, subd. 8. The increase in the percentage of amounts credited to depositors which may be carried in the available fund is more apparent than real; for formerly the available fund did not include excess of receipts over payments and funds awaiting judicious investment, which were treated by former § 149 as "temporary deposits."

The five per cent. limitation at the end of the section is new.

CROSS-REFERENCES.—Necessity for designating depository, see § 244, and note; preference of deposits, see § 278 and note.

AMOUNT OF DEPOSIT.—It has been held that a savings bank might deposit in one bank and in a single account a portion of its available fund, for current expenses, and a portion of its accumulated funds the temporary deposit of which was authorized by former § 149, notwithstanding that the aggregate amount of the two funds deposited would exceed the percentage of the available fund which might be deposited in one bank under former § 148. *Chenango Valley Sav. Bank v. Dunn*, 40 App. Div. 552.

This rule would seem to obtain no longer under the amended section.

UNAUTHORIZED DEPOSIT NOT A LOAN.—The fact that a savings bank making an authorized deposit with another bank secures from the latter

an agreement to pay interest thereon, does not convert the deposit into an unauthorized loan. *Erie County Sav. Bank v. Coit*, 104 N. Y. 532; *Matter of Patterson*, 18 Hun 221, *aff'd* 78 N. Y. 608, on opinion below. *Upton v. N. Y. & Erie Bank*, 13 Hun 269.

LOANS OF AVAILABLE FUND.—The following opinions were rendered under the provisions of former § 148 authorizing and regulating loans of the available fund—provisions now embraced in § 239, subd. 8.

The twenty-five per cent. limitation with respect to deposits had no application to loans made under former § 148. *Atty.-Gen. Rep.* (1909) 735.

The available fund might be loaned upon the pledge of any of the first mortgage bonds of a railroad which could be purchased as an investment under subdivision 6 of former § 146 (now § 239, subdiv. 7), except bonds issued to retire all prior mortgage indebtedness of the railroad when such indebtedness had not actually been retired so as to make the refunding mortgage a first mortgage. *Atty.-Gen. Rep.* (1911) vol. 2, p. 371.

SECURITIES MAY NOT BE LOANED.—The securities in which the funds of a savings bank are invested were no part of its available fund which might be loaned under former § 148. Under no circumstances may the bank lend such securities. It may not lend them to national banks for deposit in the treasury department as security for additional circulation. *Atty.-Gen. Rep.* (1906) 516; *Atty.-Gen. Rep.* (1909) 720.

This rule cannot be evaded by an agreement which provides in substance for a sale of the securities to a national bank and a resale by the latter to the savings bank at the same price, but which creates no contingency under which title may vest absolutely in the national bank. Such a transaction is in effect a loan. *Atty.-Gen. Rep.* (1909) 720.

§ 252. Guaranty fund.

The surplus of every savings bank, at the time this act takes effect, the contributions of its incorporators or trustees under the provisions of section two hundred and thirty-four of this article, and, the sums credited thereto from its net earnings under the provisions of section two hundred and fifty-five of this article, shall constitute a guaranty fund for the security of its depositors and shall be held to meet any contingency or loss in its business from depreciation of its securities or otherwise, and for no other purpose except as provided in section two hundred and thirty-six, two hundred and thirty-seven and subdivision six of section two hundred and fifty-six of this article.

Source.—New. Former § 153 provided for the optional accumulation of a fund from net profits to the amount of fifteen per cent. of the deposit liabilities.

Amended by L. 1915, Chap. 372. In effect May 1, 1915.

The guaranty fund provisions of the present law represent compromises between the widely divergent views of experienced savings bankers. While all savings bank surpluses now become the guaranty funds of the respective banks, and while gradually increasing percentages of net earnings must be credited to this fund until it equals ten per centum of deposit liabilities, the entire amount of these percentages need not be so credited if by so doing dividends will be reduced below $3\frac{1}{2}$ per cent.; and so long as there remain any unreturned contributions to the initial guaranty or expense funds only the same percentage is credited to the guaranty fund as is declared in dividends. Moreover, provision has been made also for an undivided profits account for use in equalizing dividends throughout loan periods.

These changes undoubtedly tend to strengthen the security of savings institutions; and the prohibition against using any part of the guaranty fund for dividends, except such portion as, when added to undivided profits, exceeds 25% of deposit liabilities, supplies the institution with a fund which serves as a partial substitute for capital. See §§ 253, 255, 256.

CROSS-REFERENCES.—Definitions of "guaranty fund," "surplus" and "net earnings," see § 3.

Guaranty fund of savings and loan association, see § 392; of land bank, see § 427; of credit union, see § 457.

Determination of amount of guaranty fund, see § 253.

OWNERSHIP OF SURPLUS.—The surplus of a savings bank is the property of the depositors, not of the bank or of its trustees. *People ex rel. Newburgh Savings Bank v. Peck*, 157 N. Y. 51.

SURPLUS EXEMPT FROM LOCAL TAXATION.—Under Tax Law, § 4, subd. 14, exempting from taxation "the deposits in any bank for savings which are due depositors," the surplus of a savings bank is exempt. *People ex rel. Newburgh Savings Bank v. Peck*, 157 N. Y. 51.

But see Tax Law, § 189, post, imposing a franchise tax of one per centum on the par value of its surplus and undivided earnings.

§ 253. Amount of guaranty fund; how determined.

1. To determine the amount of the guaranty fund of a savings bank its total liabilities due and accrued, its undivided profits and its net earnings since the last declaration of dividends shall be subtracted from its total assets. The value of its assets for the purpose of this calculation shall be stated as follows:

(a) Its interest bearing stocks, bonds, or other obligations shall not be valued above the estimated market value thereof as last determined by the superintendent of banks.

(b) The value of its real estate shall not in any event be estimated above cost, and if such real estate has been acquired by foreclosure, judgment or decree the value of such real estate so

acquired shall not be estimated above its actual cash value as determined by written appraisal signed by at least three trustees of such savings bank and filed with it.

(c) Such assets shall be excluded as have been disallowed by the superintendent of banks or its trustees, and also any debts owing to it which shall have remained due without prosecution and upon which no interest shall have been paid for more than one year, or on which a judgment has been recovered which shall have remained unsatisfied for more than two years, unless the superintendent of banks, upon application by such savings bank, shall have fixed a valuation at which such debts may be carried as an asset, or unless such debts are secured by first mortgage upon real estate, in which latter case they may be carried at the actual cash value of such real estate as determined by written appraisal signed by at least three trustees of such savings bank and filed with it.

2. The amount of the guaranty fund of a savings bank at the close of any dividend period may be determined by adding to the guaranty fund at the beginning of such period any appreciation in the estimated market value of its securities resulting from a revaluation thereof by the superintendent of banks, the sums recovered on items previously charged to it and any amounts allowed by the superintendent of banks on account of assets previously disallowed and charged to it, and deducting therefrom all losses sustained by the savings bank during such period. In the computation of losses all items shall be included which shall have been disallowed by its board of trustees or by the superintendent of banks, together with any depreciation in the value of its securities below their estimated market value as last fixed by the superintendent of banks, and all debts owing to it upon which no interest shall have been paid for one year or on which a judgment has been recovered which shall have remained unsatisfied for two years, unless the superintendent of banks upon the application of the savings bank shall have fixed a value at which such debts may be allowed or unless such debts are secured by first mortgage upon real estate, in either of which events only the amount by which such debts exceed the value allowed by the superintendent of banks or the cash value of the real estate securing them as determined

by written appraisal signed by at least three trustees of such savings bank and filed with it, need be so deducted.

Source. — New.

CROSS-REFERENCES.—Definitions of "guaranty fund," "surplus," "net earnings," "undivided profits" and "dividend period," see § 3.

Similar provision as to savings and loan associations, see § 393.

See note to § 252.

§ 254. Calculation of earnings for dividend period.

1. Gross earnings. To determine the amount of gross earnings of a savings bank during any dividend period the following items may be included:

(a) All earnings actually received during such period, less interest accrued and unpaid included in the last previous calculation of earnings;

(b) Interest accrued and unpaid upon debts owing to it secured by collateral as authorized by this article, upon which there has been no default for more than one year, and upon corporate stocks, bonds, or other interest-bearing obligations owned by it upon which there is no default;

(c) The sums added to the cost of securities purchased for less than par as a result of amortization.

(d) Any profits actually received during such period from the sale of securities, real estate or other property owned by it.

2. Net earnings. To determine the amount of its net earnings for such dividend period the following items shall be deducted from gross earnings:

(a) All expenses paid or incurred, both ordinary and extraordinary, in the transaction of its business, the collection of its debts and the management of its affairs, less expenses incurred and interest accrued upon its debts deducted at the last previous calculation of net earnings for dividend purposes;

(b) Interest paid or accrued and unpaid upon debts owing by it;

(c) The amounts deducted through amortization from the cost of corporate stocks, bonds or other interest-bearing obligations purchased above par in order to bring them to par at maturity;

(d) Any losses that may have been sustained by it in excess of its guaranty fund and undivided profits.

The balance thus obtained shall constitute the net earnings of such savings bank for such period.

Source.—Former § 28. The language is for the most part new.

One important purpose of this method of calculating net earnings is to prevent the declaration of a dividend based on paper profits. In calculating earnings for dividend purposes securities must be carried at amortised cost until sold. This provision was contained in much less definite language in former § 153.

CROSS-REFERENCES.—Definitions of “guaranty fund,” “net earnings,” “undivided profits” and “dividend period,” see § 3.

Similar provision as to banks, see § 116; as to trust companies, see § 202.

General powers as to dividends, see §§ 2 (definition) 238, subd. 1.

§ 255. Deductions from net earnings for guaranty fund.

If at the close of any dividend period the guaranty fund of any savings bank be less than ten per centum of the amount due to depositors, there shall be deducted from its net earnings for such period and credited to its guaranty fund five per centum of its net earnings during the year nineteen hundred and fourteen; six per centum during the year nineteen hundred and fifteen; seven per centum during the year nineteen hundred and sixteen; eight per centum during the year nineteen hundred and seventeen; nine per centum during the year nineteen hundred and eighteen; ten per centum during the year nineteen hundred and nineteen, and ten per centum during any year thereafter in which a dividend shall be declared or so much of such percentages as will not compel it to reduce its dividends to depositors below the rate of three and one-half per centum per annum. The amount of net earnings remaining after such deduction for the guaranty fund and its undivided profits shall be available for the declaration of dividends for such period.

While the trustees of a savings bank are paying its expenses or any portion thereof, the amounts to be credited to its guaranty fund shall be computed at the same percentages upon the total dividends credited to its depositors instead of upon its net earnings.

Source.—New.

CROSS-REFERENCES.—Definitions of “guaranty fund,” “dividend period,” “undivided profits” and “net earnings,” see § 3.

Similar provisions as to banks, see § 118; as to trust companies, see § 204; as to savings and loan associations, see § 395; as to credit unions, see § 459.

See note to § 252.

§ 256. Regulations and restrictions as to dividends; accumulation of guaranty fund and undivided profits; liability of trustees; extra dividends.

1. Every savings bank shall regulate the rate of dividend not to exceed five per centum per annum upon the deposits therewith, in such manner that depositors shall receive as nearly as may be all the earnings of the savings bank after transferring the amount required by section two hundred and fifty-five of this article, and such further amounts as its trustees may deem it expedient and for the security of the depositors to transfer, to the guaranty fund which to the amount of ten per centum of the amount due its depositors the trustees shall gradually accumulate and hold. Such trustees may also deduct from its net earnings, and carry as undivided profits for the purpose of maintaining its rate of dividends, such additional sums as they may deem wise.

2. Every savings bank may classify its depositors according to the character, amount or duration of their dealings with the savings bank, and may regulate the dividends in such manner that each depositor shall receive the same ratable portion of dividends as all others of his class.

3. Contributions to the expense fund and unimpaired contributions to the initial guaranty fund made by the incorporators or trustees of such savings bank, shall be entitled to have dividends apportioned thereon, which may be credited and paid to such incorporators or trustees, or to their representatives or assigns. Whenever the guaranty fund of any such savings bank is sufficiently large to permit the return of such contributions, the contributors may receive dividends thereon not theretofore credited or paid at the same rate paid to depositors.

4. A savings bank shall not

(a) Declare, credit or pay any dividend on any deposit except as authorized by a vote of a majority of the board of trustees duly entered upon their minutes, whereon shall be recorded the ayes and nays upon each vote.

(b) Pay any dividend other than the regular quarterly or semi-annual dividend, or the extra dividend prescribed in subdivision six of this section.

(c) Declare, credit or pay dividends on any deposit for a longer period than the same has been deposited; provided, however, that deposits made not later than the tenth business day of the month commencing any semi-annual dividend period or the third business day of any month, or withdrawn upon one of the last three business days of the month ending any quarterly or semi-annual dividend period, may have dividends declared upon them for the whole of the period or month when they were so deposited or withdrawn; and provided further that, if the by-laws so provide, accounts closed between dividend periods may be credited with dividends at the rate of the last dividend, computing from the last dividend period to the date when closed.

5. Whenever any dividend shall, except as provided in subdivision six of this section, be declared and credited in excess of the sum of its net earning since the last declaration of dividends, after making the deductions for amortization and for its guaranty fund as provided in sections two hundred and forty-six, two hundred and fifty-four and two hundred and fifty-five of this article, plus such undivided profits as it shall have accumulated in accordance with the provisions of subdivision one of this section, the trustees voting for such dividend shall be jointly and severally liable to such savings bank for the amount of such excess so declared and credited.

6. The trustees of any savings bank whose undivided profits and guaranty fund, determined in the manner prescribed in section two hundred and fifty-three of this article, amount to more than twenty-five per centum of the amount due its depositors, shall at least once in three years divide equitably the accumulation beyond such twenty-five per centum as an extra dividend to depositors in excess of the regular dividend authorized. A notice posted conspicuously in a savings bank of a change in the rate of dividends shall be equivalent to a personal notice.

Source.—Former §§ 152, 153.

Subds. 3 and 5 amended by L. 1915, Chap. 372. In effect May 1, 1915.

Subdivision 1 is based upon former § 153.

The ten per cent. guaranty fund provided by subdivision 1 takes the place of the optional fifteen per cent. "surplus" fund provided by former § 153. The creation of the undivided profits account (subd. 1) is new.

Subdivision 2 is taken from former § 153 without substantial change.

Subdivision 3 is new.

Subdivision 4 (a) is taken from former § 153.

The provisions of subdivision 4(b) are taken from former § 152, except the reference to the extra dividend, that being new.

Subdivision 4(c) is taken from former § 153, with the exception of the last proviso which is new.

Subdivision 5 is taken from former § 153, with modifications as to amortization and the guaranty fund.

Subdivision 6 is adapted from the last two sentences of former § 153. An extra dividend now depends upon an accumulation of the guaranty fund and undivided profits exceeding twenty-five per cent. of the deposits, instead of a surplus exceeding fifteen per cent. of the deposits as provided in former § 153.

CROSS-REFERENCES.—Definitions of "guaranty fund," "net earnings," "undivided profits" and "dividend period," see § 3.

General powers as to dividends, see §§ 2 (definition) 238, subd. 1.

Criminal liability of trustees for declaring illegal dividend, see Penal Law, § 297.

SUBDIVISION 1.

CONTRACT FOR FIXED RATES.—A savings bank cannot contract to pay future dividends or interest to depositors at a fixed rate. Atty.-Gen. Rep. (1908) 397.

This rule applies even though rate fixed is less than the rate usually paid; and it makes no difference that the deposit is made by a postal savings bank or under order of court. Atty.-Gen. Rep. (1912), vol. 2, 500.

It is only with respect to moneys of the trustees in the hands of a savings bank which they have distributed to the guarantee and expense funds that the incorporators or trustees are regarded as ordinary depositors and are entitled to their yearly earnings. Atty.-Gen. Rep., July 9, 1914.

SUBDIVISION 2.

BY-LAW CLOSING INACTIVE ACCOUNTS.—A savings bank has no power to enact a by-law providing that all accounts shall be closed and shall cease to draw interest at the expiration of ten years from the time of the last deposit or draft. Atty.-Gen. Rep. (1905) 441.

SUBDIVISION 4(c).

COMPUTATION OF DIVIDEND PERIOD.—The provision that the trustees shall not declare or allow interest (dividends) on any deposit for a longer period than the same has been deposited, with exceptions as to deposits made not later than the tenth "business day" of the month, etc. (now subd. 4[c]), formerly did not contain the word "business." The word was inserted in former § 153 for the apparent purpose of avoiding a ruling of the Attorney-General that the provision referred to calendar days and that holidays could not be excluded. Atty.-Gen. Rep. (1908) 384.

SUBDIVISION 5.

DIVIDENDS IN EXCESS OF EARNINGS.—The provisions of the Act of 1875 (Ch. 371, § 33) relating to the declaration of interest and dividends did not require that expenses be deducted from earned interest or profits of the bank before ascertaining whether a given rate of interest or dividend could

lawfully be declared; and it did not require that the interest or profits earned should actually have been received. *Van Dyck v. McQuade*, 86 N. Y. 38.

LIABILITY OF TRUSTEES.—The provisions making the trustees personally liable for interest or dividends unlawfully declared and paid are penal in their character and must be strictly construed. A trustee cannot be held liable for the amount of a dividend declared and paid in violation of the statute, unless he voted for it. Approving the dividend after it has been declared is not enough to make him liable. *Van Dyck v. McQuade*, 86 N. Y. 38.

§ 257. Per centum of par value surplus; how determined.

In determining the per centum of par value surplus held by any savings bank, its interest-bearing stocks and bonds shall not be estimated above their par value or above their market value if below par. Its bonds and mortgages on which there are no arrears of interest for a longer period than six months shall be estimated at their face, and its real property at not above cost. But the value of such stocks or bonds, or bonds and mortgages, as are in arrears of interest for six months or more, and of all other investments not herein enumerated, shall be estimated according to the valuation placed thereon by the superintendent of banks, as provided in section fifty-four of this chapter.

Source.—Former § 154.

The main purpose of this section is to provide a method for computing the franchise tax of one per centum on the par value of the surplus and undivided earnings of savings banks. See *Tax Law*, § 189, post.

§ 258. Advertisements of surplus or guaranty fund.

No savings bank shall hereafter put forth any sign or notice or publish or circulate any advertisement or advertising literature upon which or in which it shall be stated that such savings bank has a surplus or guaranty fund in excess of its market value surplus or guaranty fund as determined under the provisions of this article, unless the nature of the same be clearly made to appear.

Source.—New.

CROSS-REFERENCES.—Valuation of securities, see §§ 53, 54, 257.

Determination of amount of guaranty fund, see § 253.

§ 259. Change of location.

Any savings bank may make a written application to the superintendent of banks for leave to change its place of business to another place in the same county. The application shall state the reasons for such proposed change, and shall be signed and acknowledged by a majority of its board of trustees. If the proposed place of business is within the limits of the town, village, borough or city, if in a city not divided into boroughs, in which the present place of business of the savings bank is located, such change may be made upon the written approval of the superintendent; if beyond such limits, notice of intention to make such application, signed by two principal officers of the savings bank shall be published once a week for two successive weeks immediately preceding such application in a newspaper published in the city of Albany in which notices by state officers are required by law to be published, and in a newspaper to be designated by the superintendent, published in the county in which the present place of business of such savings bank is located. If the superintendent shall grant his certificate authorizing the change of location, as provided in section fifty of this chapter, the savings bank shall cause such certificate to be published once in each week for two successive weeks in the newspapers in which the notice of application was published. When the requirements of this section shall have been fully complied with, the savings bank may, upon or after the day specified in the certificate, remove its property and effects to the location designated therein, and thereafter its principal place of business shall be the location so specified; and it shall have all the rights and powers in such new location which it possessed at its former location.

Source.—Former §§ 31, 147.

CROSS-REFERENCES.—For similar provisions as to other corporations doing business under the Banking Law, see § 119 and the annotations to that section.

Duties of superintendent on application for change of location, see § 50.

§ 260. Board of trustees; number and qualifications.

1. There shall be a board of trustees who shall have the entire management and control of the affairs of the savings bank. The persons named in the certificate of authorization shall be the first trustees. The board shall consist of not less than nine members, nor, except as provided in section two hundred and sixty-six of this article, more than thirty members.

2. A person shall not be a trustee of a savings bank, if he

(a) Is not a resident of this state; provided, however, that one-fifth of the trustees of any savings bank in the city of New York may be residents of a state which adjoins said city.

(b) Has been adjudicated a bankrupt or has taken the benefit of any insolvency law, or has made a general assignment for the benefit of creditors.

(c) Has suffered a judgment recovered against him for a sum of money to remain unsatisfied of record or unsecured on appeal for a period of more than three months.

(d) Is a trustee, officer, clerk or other employee of any other savings bank.

3. Nor shall a person be a trustee of a savings bank solely by reason of his holding a public office.

Source.—Former §§ 137, 140. Subdivision 3 is new; it is designed to meet provisions in old charters making mayors of cities ex officio members of boards of trustees of savings banks.

Formerly there was no limit upon the number of trustees except that there should not be less than thirteen (former § 137.)

CROSS-REFERENCES.—Increase or reduction of number of trustees, see § 266.

For purpose of reduction of minimum number and placing a limit on maximum number, see note to § 230.

Liability of trustees for declaring unlawful dividend, see § 256, subd. 5, and annotations.

Duty of trustees to make investments, see § 251.

Liability of trustees for unlawful investments, see note to § 239.

When trustees not liable for investing in unauthorized securities, see § 259 (last paragraph).

Criminal liability of director for fraud or violation of law, see Penal Law, § 297, post.

Criminal liability of officer, etc., for receiving deposits in insolvent savings bank, see Penal Law, § 295, post.

Falsification of books, reports or statements by trustee, officer, etc., see Penal Law, § 304, post.

BORROWER NOT ELIGIBLE AS TRUSTEE.—A man who has borrowed a large sum of money from a savings bank is not eligible as trustee of the bank. The prohibition against a trustee's borrowing money from the savings bank (former § 142, now § 267, subd. 2[e]) should be construed not only to prevent a trustee from becoming a debtor to the bank, but to prevent a debtor to the bank from becoming a trustee. Atty.-Gen. Rep. (1905) 441.

NUMBER OF TRUSTEES.—By force of the section (now § 281) by which the charters of all savings banks are conformed to the present law, and which applies to savings banks incorporated before its enactment in 1892, the number of trustees of such a savings bank is restricted by the present law to the prescribed minimum; the number must be definitely fixed and can be changed only as provided by the existing statute (now § 266), notwithstanding that a by-law adopted before these statutes were enacted provides for a variable number. Atty.-Gen. Rep. (1907) 475.

STATUS AND DUTIES OF TRUSTEES.—The relation existing between a savings bank and its trustees is mainly that of principal and agent, and the relation between the trustees and the depositors is similar to that of trustee and *cestui que trust*. The trustees are bound to observe the limits placed upon their powers in the charter, and if they transcend those limits and cause damage they are liable. They are bound also to use in the execution of the trust such care and judgment as men of ordinary skill and prudence commonly exercise in the conduct of their own affairs; and when a loss occurs by their failure in this respect they are liable and cannot excuse themselves on the ground that they did not possess the skill and judgment requisite for the performance of their duties. *Hun v. Cary*, 82 N. Y. 65. See also Atty.-Gen. Rep. (1906) 516.

A person who votes in Connecticut shall not be a trustee of a savings bank, even though he maintains a residence in New York City. Atty.-Gen. Rep., May 18, 1916.

The State of Connecticut does not adjoin the State of New York within the meaning of section 260-2 a. Atty.-Gen. Rep., June 7, 1915.

§ 261. Oath and declaration of trustee.

1. Each trustee, whether named in the certificate of authorization or elected to fill a vacancy, shall, when such certificate of authorization has been issued, or when notified of such election, take an oath that he will, so far as it devolves on him, diligently and honestly administer the affairs of the savings bank, and will not knowingly violate, or willingly permit to be violated any of the provisions of law applicable to such savings bank. Such oath shall be subscribed by the trustee making it and certified by the officer before whom it is taken, and shall be immediately transmitted to the superintendent of banks and filed and preserved in his office.

2. Prior to the first day of March in each year, every trustee of every savings bank shall subscribe a declaration to the effect

that he is, at the date thereof, a trustee of the savings bank, and that he has not resigned, become ineligible, or in any other manner vacated his office as such trustee. Such declaration shall be acknowledged in like manner as a deed to be entitled to record and shall be transmitted to the superintendent of banks and filed in his office prior to the tenth day of March in each year.

Source.—Former § 137.

CROSS-REFERENCES.—Forfeiture of office for failure to comply with this section, see § 268, subdiv. 2 (a) and subdiv. 3 (a).

As to oaths of directors of other corporations doing business under the Banking Law, see § 124 and cross-references there given.

§ 262. By-laws.

The board of trustees of a savings bank may from time to time make by-laws, rules and regulations, not inconsistent with law, for the election of officers and for their respective powers and duties and the manner of discharging the same; for the appointment of committees and with reference to their duties; for the increase or reduction of the number of trustees, subject to the provisions of section two hundred and sixty-six of this article; for the repayment of deposits, subject to the provisions of sections two hundred and forty-eight and two hundred and forty-nine of this article, and generally for transacting, managing and directing the affairs of the savings bank. A copy of the same shall be transmitted to the superintendent of banks, who shall be notified of any amendment or change therein.

Source.—Former § 138, amplified.

CROSS-REFERENCES.—See annotations to §§ 248, 249, 256, 260.

Power to make by-laws as to dividends, see § 256, subd. 4(c).

General power of corporation to make by-laws, see Gen. Corp. Law, § 11, subd. 5.

§ 263. Officers.

The board of trustees shall elect from their number or otherwise, a president and two vice-presidents and such other officers as they may deem fit.

Source.—Former § 137.

§ 264. Meetings of trustees; quorum; reports of officers.

1. Regular meetings of the board of trustees shall be held at least once a month.

2. A quorum at any regular or special or adjourned meeting shall consist of not less than five, of whom the president shall be one, except when he is prevented from attending by sickness or other unavoidable detention, when he may be represented in forming a quorum by the first vice-president, or in case of his absence for like cause, by the second vice-president; but less than a quorum shall have power to adjourn from time to time until the next regular meeting.

3. The board of trustees shall, by resolution duly recorded in the minutes, designate an officer or officers whose duty it shall be to prepare and submit to each trustee at each regular meeting of the board, or to an executive committee of not less than five members of such board, a written statement of all the purchases and sales of securities, and of every loan, made since the last regular meeting of the board, describing the collateral to such indebtedness as of the date of meeting at which such statement is submitted; but such officer or officers may omit from such statement loans of less than one thousand dollars, except as hereinafter provided. Such statement shall also contain a list giving the aggregate of loans to each individual, partnership, unincorporated association or corporation whose liability to the savings bank has been increased one thousand dollars or more since the last regular meeting of the board, together with a description of the collateral to such indebtedness held by the savings bank at the date of the meeting at which such statement is submitted. A copy of such statement, together with a list of the trustees present at such meeting, verified by the affidavit of the officer or officers charged with the duty of preparing and submitting such statement shall be filed with the records of the savings bank within one day after such meeting, and shall be presumptive evidence of the matters therein stated.

Source.—Former §§ 42, 139.

Subdivisions 1 and 3 are adapted from former § 42. Subdivision 2 is taken from former § 139; it changes the quorum from seven (former § 139) to five. For reason of change, see note to § 230.

CROSS-REFERENCES.—Similar provision as to banks, see § 129; as to trust companies, see § 214; as to personal loan associations, see § 357.

Quorum of directors and powers of majority, see Gen. Corp. Law, § 34.

This section (formerly § 42), providing that the trustees may by resolution require the detail information of the bank's business to be given to the executive committee composed of at least five members of the board leads necessarily to the inference that the trustees who are not members of the executive committee are not to be charged with knowledge of the detail management, which need only be reported to the executive committee. *Kavanaugh v. Gould*, 147 App. Div. 281.

§ 265. Compensation of trustees, officers and attorneys.

1. A trustee of a savings bank shall not directly or indirectly receive any pay or emolument for his attendance at meetings of the board, or for any other services as trustee, except as provided in this section.

2. Trustees acting as officers of the savings bank, whose duties require and receive their regular and faithful attendance at the institution, and the trustees appointed as a committee to examine the vouchers and assets pursuant to section two hundred and seventy-two of this article, to perform the duties required by subdivision six of section two hundred and thirty-nine of this article, or to render other special services as members of committees provided for in the by-laws, may receive such compensation as in the opinion of a majority of the board of trustees shall be just and reasonable; but such majority shall be exclusive of any trustee to whom such compensation shall be voted.

3. An attorney for a savings bank, although he be a trustee thereof, may receive a reasonable compensation for his professional services, including examinations and certificates of title to real property on which mortgage loans are made by the savings bank; or if the savings bank requires the borrowers to pay all expenses of searches, examinations and certificates of title, including the drawing, perfecting and recording of papers, such attorney may collect of the borrower and retain for his own use the usual fees for such services, excepting any commissions as broker or on account of placing or accepting such mortgage loans.

4. If an officer or attorney of a savings bank shall receive, on any loan made by the savings bank, any commission which he is

not authorized by this section to retain for his own use, he shall immediately pay the same over to the savings bank.

Source.—Former §§ 141, 142, 155.

Subd. 2 amended by L. 1915, Chap. 372. In effect May 1, 1915.

Subdivision 1 is based upon former § 142 and the last sentence of former § 155.

Subdivision 2 is based upon the last part of former § 141 and the first sentence of former § 155.

Subdivision 3 is based upon the second sentence of former § 150 in so far as concerns the liability of the borrower to pay the expenses of searches, examinations and certificates of title, etc. The rest of the subdivision is new. The savings bank may pay its attorney for the services mentioned and may charge the sum to the mortgagor, or the attorney may collect his fees from the mortgagor if the savings bank so directs. One purpose of subdivision 3 is to supply an omission in the former Banking Law with respect to compensation of trustees for services as attorneys.

Subdivision 4 is new.

ATTORNEY AS TRUSTEE.—A savings bank was not authorized by former § 155 to pay for the services of one of its trustees in acting as secretary to the Board of Trustees and keeping the minutes of its monthly meetings, although said trustee was an attorney without whose advice it might have been necessary occasionally to employ counsel. Atty.-Gen. Rep. (1910) 840.

Subdivision 3 apparently modifies this rule.

EXPENSES OF TRUSTEES ATTENDING MEETINGS.—A savings bank has no right to pay the actual and necessary expenses incurred by trustees attending meetings of the board. Atty.-Gen. Rep. (1905) 444.

MAJORITY VOTING FOR COMPENSATION.—The majority required to vote compensation to a trustee means a majority of the full board excluding both the particular trustee whose compensation is in question and *all other trustees to whom compensation is paid*. This applies to a proposed increase of salary. Atty.-Gen. Rep. (1898) 121.

§ 266. Increase or reduction of number of trustees.

The board of trustees of every savings bank may, by resolution incorporated in its by-laws, increase or reduce the number of trustees named in the original charter or certificate of authorization.

1. The number may be increased to a number designated in the resolution and not exceeding thirty, provided that reasons therefor are shown to the satisfaction of the superintendent of banks and his written consent thereto is first obtained.

2. The number may be reduced to a number designated in the resolution but not more than thirty or less than nine. The re-

duction shall be effected by omissions to fill vacancies occurring in the board.

3. Where a savings bank now has more than thirty trustees, vacancies in the board shall not be filled until the total number of trustees shall have been reduced to thirty.

Source.—Former § 137. The limitation as to the maximum number is new. The minimum number is reduced from thirteen to nine; for reason of change, see note to § 230. Subdivision 3 is new.

CROSS-REFERENCES.—See § 260 and notes.

Change of number of directors of bank, see § 127; of savings and loan association, see § 408; of land bank, see § 433.

§ 267. Restrictions upon trustees and officers.

1: A trustee of a savings bank shall not

(a) Have any interest, direct or indirect, in the gains or profits of the savings bank, except to receive dividends upon the amounts contributed by him to the guaranty fund and the expense fund of the savings bank as provided in sections two hundred and thirty-four and two hundred and thirty-five of this article.

(b) Become a member of the board of directors of a bank, trust company or national banking association of which board enough other trustees of the savings bank are members to constitute with him a majority of the board of trustees.

2. Neither a trustee nor an officer of a savings bank shall

(a) For himself or as agent or partner of another, directly or indirectly use any of the funds or deposits held by the savings bank, except to make such current and necessary payments as are authorized by the board of trustees.

(b) Receive directly or indirectly and retain for his own use any commission on or benefit from any loan made by the savings bank, or any pay or emolument for services rendered to any borrower from the savings bank in connection with such loan, except as authorized by section two hundred and sixty-five of this article.

(c) Direct or require a borrower of the savings bank on mortgage to negotiate any policy of insurance on the mortgaged property through any particular insurance broker or brokers, or attempt to divert to any particular insurance broker or brokers the patronage of borrowers from the savings bank, or refuse to accept

any such insurance policy because it was not negotiated through a particular insurance broker or brokers.

(d) Become an indorser, surety or guarantor, or in any manner an obligor, for any loan made by the savings bank.

(e) For himself or as agent or partner of another, directly or indirectly borrow any of the funds or deposits held by the savings bank, or become the owner of real property upon which the savings bank holds a mortgage. A loan to or a purchase by a corporation in which he is a stockholder to the amount of fifteen per centum of the total outstanding stock, or in which he and other trustees of the savings bank hold stock to the amount of twenty-five per centum of the total outstanding stock, shall be deemed a loan to or a purchase by such trustee within the meaning of this section; except when the loan to or purchase by such corporation shall have occurred without his knowledge or against his protest. A deposit in a bank shall not be deemed a loan within the meaning of this section.

This section shall not be construed to prohibit a savings bank from making a loan to a religious corporation, club, or other membership corporation of which one or more trustees of such savings bank may be members or officers but in which they have no financial interest, nor shall it be construed to prohibit a savings bank from making loans to or purchasing guaranteed mortgages from any stock corporation, provided no trustee owns more than fifteen per centum of the capital stock of such corporation, and the total amount of such stock owned by all the trustees of such savings bank is less than twenty-five per centum of such capital stock.

Source.—Former §§ 137, 140, 142, rewritten.

Subdivision 2(c), and all of subd. 2(e) after the words "held by the savings bank" in the first sentence, are new.

Const., Art. VIII, § 4, provides that no trustee of a savings bank or institution for savings shall have any interest, direct or indirect, in the profits of the corporation, and that no director or trustee thereof shall be interested in any loan or use of any of its money or property.

See § 260 and notes; also § 263 as to officers.

Overdrafts by, or commissions and gratuities to officer, director, etc., see Penal Law, § 294. post.

SUBDIVISION 1(a).

This section does not forbid a trustee of a savings bank from depositing his own money therein. There can be no "gains or profits" of the bank un-

til the fixed charges have been paid and interest credited on the deposits. Atty.-Gen. Rep. (1906) 515.

SUBDIVISION 2(d).

The prohibition against a trustee's becoming an indorser, surety, etc., is not violated when a trustee gives a mortgage to make up a deficiency in the savings bank's assets caused by a loss upon a loan previously made. *Best v. Thiel*, 79 N. Y. 15.

SUBDIVISION 2(e).

A loan upon the security of land of a corporation in which one of the trustees is a large stockholder is illegal and renders the trustees personally liable. *Paine v. Barnum*, 59 How. Pr. 303.

The provisions of the second sentence of subd. 2(e) is based upon this decision.

The prohibition against a trustee's or officer's borrowing, directly or indirectly, any funds or deposits of the bank, is not avoided by purchasing mortgages from him. Buying mortgages violates the prohibition as much as lending money and taking mortgages for security. *Paine v. Irwin*, 59 How. Pr. 316.

Such prohibition is violated when an officer takes checks upon the bank, signed by its secretary and president, and uses them for stock speculation on his own account, the checks being paid by other checks upon banks where the savings bank keeps its funds on deposit. *Knapp v. Roche*, 62 N. Y. 614.

Borrower not eligible as trustee, see annotations to § 260.

THE LAST PARAGRAPH OF THE SECTION is designed to abrogate a ruling of the Attorney-General that a trustee of a savings bank has such an interest in a loan by the bank to a religious corporation of which he is a member and a trustee, that the loan violates the statute and forfeits his office. Atty.-Gen. Rep. (1912), Vol. 2, page 318.

§ 268. Removal and forfeiture of office of trustee.

1. Whenever, in the judgment of three-fourths of the trustees, the conduct and habits of a trustee of any savings bank are of such a character as to be injurious to such savings bank, or he has been guilty of acts that are detrimental or hostile to the interests of such savings bank, he may be removed from office, at any regular meeting of the trustees, by the affirmative vote of three-fourths of the total number thereof; provided, however, that a written copy of the charges made against him shall have been served upon him personally at least two weeks before such meeting, that the vote of such trustees by ayes and nays shall be entered in the record of the minutes of such meeting, and that such removal shall receive the written approval of the superintendent of banks, which shall be

attached to the minutes of such meeting and form a part of the record.

2. The office of a trustee of a savings bank shall immediately become vacant whenever he

(a) Shall fail to comply with any of the provisions of section two hundred and sixty-one of this article relating to his official oath and declaration.

(b) Shall become disqualified for any of the reasons specified in subdivision two of section two hundred and sixty of this article.

(c) Shall have failed to attend the regular meetings of the board of trustees, or to perform any of his duties as trustee, for a period of six successive months, unless excused by the board for such failure.

(d) Shall violate any of the provisions of section two hundred and sixty-seven of this article imposing restrictions upon trustees and officers, except paragraph (c) of subdivision two thereof. But a trustee shall not be held to have forfeited or vacated his office by reason of any loan made by the savings bank to a corporation of which he was a member or stockholder, or by reason of the purchase of any guaranteed mortgage by the savings bank from such corporation, or by reason of the purchase by such corporation of real estate subject to a mortgage held by the savings bank, if such loan or purchase was made before this chapter takes effect.

3. A trustee who has forfeited or vacated his office shall not be eligible to re-election, except when the forfeiture or vacancy occurred solely by reason of his

(a) Failure to comply with the provisions of section two hundred and sixty-one of this article, relating to his official oath and declaration; or

(b) Neglect of his official duties as prescribed in paragraph (c) of subdivision two of this section; or

(c) Disqualification through becoming a non-resident, or becoming a trustee, officer, clerk or other employee of another savings bank, or becoming a director of a bank, trust company or national banking association under the circumstances specified in paragraph (b) of subdivision one of section two hundred and sixty-seven of this article; and such disqualification shall have been removed.

Source.— Former §§ 137, 140, 140-a.

Subdivision 1 is taken from former § 140-a.

Subdivisions 2 and 3 are adapted from former §§ 137 and 140, rearranged and rewritten.

The second sentence of subdivision 2(d) is new. The first clause of that sentence is designed to abrogate an opinion of the Attorney-General. See last paragraph of annotation to § 267.

CROSS-REFERENCE.— Discretion of superintendent in approving removal of trustee under subd. 1, see § 48.

§ 269. Filling vacancies in board of trustees.

A vacancy in the board of trustees shall be filled by the board as soon as practicable, at a regular meeting thereof, except as otherwise provided in section two hundred and sixty-six of this article with respect to the reduction of the number of trustees.

Source.— Former § 137. The exception is new.

§ 270. Security may be required from officers and employees; premiums on fidelity bonds.

The trustees of every savings bank shall have power to require from the officers, clerks and agents thereof such security for their fidelity and the faithful performance of their duties as the trustees shall deem necessary. Such security may be accepted from any company authorized to furnish fidelity bonds and doing business under authority of the New York insurance department, and the premiums therefor may be paid as a necessary expense of said savings bank.

Source.— Former § 141. The last sentence is new.

§ 271. Pensions.

A savings bank may, in the discretion of its board of trustees, retire any officer, clerk or other employee who shall have served the bank for a period of thirty years or more, or who shall have served the bank for a period of twenty years or more and shall have become physically or mentally incapacitated for his position, or who shall have served the bank for a period of twenty years

or more and shall have attained the age of sixty years. Any person retired from service pursuant to this section may be paid in equal monthly instalments at the rate of not exceeding two per centum of his average annual salary for the three years immediately preceding his retirement, for each year of service in the bank, but the maximum annual amount paid shall in no case exceed sixty per centum of such average annual salary.

Source.—New.

§ 272. Examination of vouchers and assets by trustees.

The trustees of every savings bank, by a committee of not less than three of their number, on or before the first days of January and July in each year, shall thoroughly examine the books, vouchers and assets of such savings bank, and its affairs generally. The statement or schedule of assets and liabilities reported to the superintendent of banks for the first of January and July in each year, as provided in the section next following, shall be based upon such examinations, and shall be verified by the oath of a majority of the trustees making it; and the trustees of any savings bank may require such examination at such other times as they shall prescribe. The trustees shall, as often as once in each six months during each year, cause to be taken an accurate balance of their depositors' ledgers, and in their said semi-annual report to the superintendent they shall state the fact that such balance has been taken, and the discrepancies, if any, existing between the amount due depositors, as shown by such balance, and the amount so due as shown by the general ledger.

Source.—Former § 157.

§ 273. Reports to superintendent; penalty for failure to make.

1. Semi-annual report. On or before the first day of February and the first day of August in each year every savings bank shall make written report to the superintendent of banks, which report shall be in the form prescribed by the superintendent and shall contain a statement of its condition on the morning of the first day of January and of the first day of July in the said year, respectively.

2. Contents of report. Every such report shall state the amount

loaned upon bond and mortgage, and a list of all bonds and mortgages upon which money has been loaned that have not been previously reported, which list shall show the location of the mortgaged premises. It shall contain a list of all bonds and mortgages previously reported that since have been paid wholly or in part or have been foreclosed, and the amounts of such payments and the proceeds of such foreclosures. It shall state the original cost, date of purchase, date of maturity, stated rate of interest, the present cost after amortization, par value, and estimated market value, of all stock or bond investments, designating each particular kind of stock or bond; the amounts loaned upon promissory notes, upon the pledge of the different classes of securities authorized by this article, with a statement of the amount of the securities held as collateral for such loans; the amount invested in real estate, giving the cost of the same, and, in the case of real estate purchased at judicial sale or taken in satisfaction of debts due the savings bank, the actual cash value thereof as appraised by its trustees; the amount of cash on hand, and on deposit in banks or trust companies and the amount deposited in each.

The present cost of stock and bond investments shall be determined by amortization as provided in section two hundred and forty-six of this article. The estimated market value of the stock or bond investments shall be determined according to the list of securities furnished by the superintendent of banks pursuant to section fifty-three of article two of this chapter.

Such report shall state all the liabilities of the savings bank, the amount due to depositors, which shall include any dividend to be credited to them for the six months ending on the day as to which such report is made, and all other debts and claims against the savings bank which are or may be a charge upon its assets.

Such report shall state the amount deposited and the amount withdrawn during the twelve months immediately preceding; the whole amount of profits or interest received or earned and the whole amount of dividends credited to depositors, together with the amount of each dividend and the rate at which it was declared, the number of accounts opened or reopened, the number closed during the preceding six months, the number of open ac-

counts at the end of the period for which said report is made, and such other information as may be required by the superintendent.

3. Verification. Every such report shall be verified by the oaths of the two principal officers in charge of the affairs of the savings bank at the time of such verification, which shall state that the report is true and correct in all respects to the best of the knowledge and belief of the persons verifying it, and that the usual business of the savings bank has been transacted at the location required by this article and not elsewhere.

4. Special reports. Every savings bank shall also make such other special reports to the superintendent as he may from time to time require, which shall be in such form and filed at such date as may be prescribed by the superintendent and shall, if required by him, be verified in such manner as he may prescribe.

5. Penalty. If any savings bank shall fail to make any report mentioned by this section, on or before the day designated for the making thereof, or shall fail to include therein any matter required by the superintendent to be stated, such savings bank shall forfeit to the people of the state the sum of one hundred dollars for every day that such report shall be delayed or withheld, and for every day that it shall fail to report any such omitted matter, unless the time therefor shall have been extended by the superintendent as provided by section forty-nine of this chapter.

Source.—Former §§ 21, 22.

Subdivisions 1 and 3 are taken from former § 21.

Subdivision 2 is taken from former § 21 with modifications to make its provisions harmonious with other provisions of the present law. The references to amortization, the provisions as to real estate purchased at judicial sale or taken in satisfaction of debts, and the six months period (formerly twelve months) fixed by the last sentence of the subdivision, are new.

Subdivision 4 is new.

Subdivision 5 is taken from former § 22.

CROSS-REFERENCES.—Powers and duties of superintendent with regard to reports, see § 42; duty to furnish savings banks with estimated market value of bonds, see § 53.

Reports of other persons and corporations subject to the Banking Law, see § 133 and cross-references there given.

PERJURY may be predicated upon a verification of a false semi-annual report. *People v. Ostrander*, 63 Hun 335, aff'd in 135 N. Y. 639, on opinion below.

§ 274. Reports of dormant accounts; publication; penalty for failure to make.

On or before the first day of September in each year, every savings bank shall make a report in writing to the superintendent of banks, verified by the oath of the two principal officers of the institution, concerning such accounts of depositors of amounts of ten dollars or more as shall have been dormant for twenty years or more on the preceding first day of August; that is, accounts which have not been increased or diminished by deposits or withdrawals, exclusive of dividend credits; or a report verified in like manner that on the preceding first day of August such savings bank held no such accounts. The accounts of depositors whose pass-books have been presented at the bank for the entry of dividends within such period of twenty years, shall not be deemed dormant accounts within the meaning of this article.

The report of each savings bank in the year nineteen hundred and fourteen shall accurately state the full names of all depositors which the books of the savings bank show to have had ten dollars or more to their credit respectively, whose accounts have been dormant for twenty years or over; such report shall also state the date on which the original deposit was made, the last known place of residence of the depositor, his or her occupation, date of birth, nationality, parents' names if known, and the date when the savings bank discontinued the crediting of dividends on the account, together with any additional data which may aid in determining the ownership of such dormant account. All subsequent reports shall state the same details with reference to such dormant accounts as have not been previously reported and shall contain a list of such previously reported accounts as have either been paid or shall have become active accounts since the last report, through partial payments, or the presentation of pass-books for the entry of dividends. The sums to the credit of such dormant accounts are not required to be stated in the report.

Every savings bank which shall after September first, nineteen hundred and fourteen, report additional dormant accounts shall cause to be published once in each week for two successive weeks in a newspaper published in the village, borough or city (if in a city not divided into boroughs) in which such savings bank is located, if there be a newspaper published there, and once in a newspaper at Albany in which notices by state officers are required by law to be published, a list containing the full names of the depositors of such dormant accounts not previously reported, and their last known places of residence, and shall file proof by affidavit of such publication in the banking department on or before October first in each year.

Any such savings bank failing to make any report or to file any affidavit of publication required by this section shall forfeit to the people of the state the sum of one hundred dollars for each day such report or the filing of such affidavit of publication shall be so delayed or withheld, unless the time therefor shall have been extended by the superintendent as provided by section forty-nine of this chapter.

Source.—Former § 30, amended.

Time limit for making report changed from June first to September first, and beginning of report changed from preceding May first to preceding August first. Length of dormancy of accounts reduced from twenty-two years to twenty, but amount increased from five dollars to ten. Report "in the year nineteen hundred and fourteen" substituted for "the first report." The third paragraph is new.

CROSS-REFERENCES.—Powers and duties of superintendent with regard to unclaimed deposits, see §§ 45-47.

Similar provision as to banks, see § 134; as to private bankers, see § 157; as to trust companies, see § 219.

§ 275. No other report or supervision required.

No savings bank shall hereafter be required to make any annual or other report to the legislature, to the mayor or commonalty of any city, to the board of supervisors of any county or to any other officer or authority except as provided in this article; nor shall it be subject to the inspection or supervision or interference of any local officer or board, in any manner appertaining to its business or dealings.

Source.—Former § 156.

§ 276. Communications from banking department must be submitted to trustees and noted in minutes.

Each official communication directed by the superintendent of banks or one of his deputies to a savings bank or to any officer thereof, relating to an investigation or examination conducted by the banking department or containing suggestions or recommendations as to the conduct of the business of the savings bank, shall be submitted by the officer receiving it to the board of trustees at the next meeting of such board, and duly noted in the minutes of the meetings of such board.

Source.—Former § 41. The last clause, “and duly noted in the minutes” etc., is new. The section is identical with § 132 relating to banks. See the annotations to that section.

§ 277. Liability of savings bank for assessments by superintendent.

When the superintendent, pursuant to the powers conferred on him by article two of this chapter shall have levied any assessment upon any savings bank and shall have duly notified such savings bank of the amount thereof, the amount so assessed shall become a liability of and shall be paid by such savings bank to the superintendent.

Source.—New. The section is identical with § 135, relating to banks. See the annotations to that section.

§ 278. Preference of deposits made by savings bank.

All the property of any bank or trust company which shall become insolvent, shall be applied by the trustees, assignees or receivers thereof, or by the superintendent of banks if such insolvent bank or trust company is being liquidated by him under the provisions of section fifty-seven of this chapter, in the first place ratably and proportionately to the payment in full of any sum or sums of money deposited therewith by any savings bank, savings and loan association or credit union, but not to an amount exceeding that authorized to be so deposited by the provision of this chapter, and subject to any other preference provided for in the charter of any such bank or trust company.

Source.—Former § 159. Words "or credit union" are new.

CROSS-REFERENCES.—For other priorities under the Banking Law see the annotations to § 78.

Similar provisions as to deposits by savings and loan associations, see § 414; by the land bank, see § 437; by credit unions, see § 456.

Designation of depository of savings bank's funds, see § 244.

Deposit of available fund of savings banks, see § 251 and note.

ALL DEPOSITS INCLUDED.—Deposits made by a savings bank before the statute (originally Laws of 1875, ch. 371, Sec. 28) was passed are entitled to a preference as well as those made afterward. *Upton v. N. Y. & Erie Bank*, 13 Hun 260.

The statute apparently gives a preference to all deposits made by a savings bank whether they are part of the "available fund" or a part of surplus funds temporarily deposited or whether they are composed of both. *Chenango Valley Bank v. Dunn*, 40 App Div. 552. See § 251 and note.

DOES NOT INCLUDE LOANS.—On the other hand the statute does not give a preference to debts of every character which may be due from a bank to a savings institution, but applies only to such as are due for money deposited in the usual course of business and subject to the drafts of the depositor. A loan is not the subject of a preference, and cannot be treated as a deposit merely because in making it the managers or trustees of the savings bank acted without authority or in violation of law. *Rosenback v. Manufacturers' & Builders' Bank*, 69 N. Y. 358.

WHEN PREFERENCE BECOMES EFFECTIVE.—Distribution of the assets of an insolvent bank or trust company should be made as of the date when they pass into the custody of the law by the appointment of a receiver or otherwise; and the rule applies to the preference provided in this section. *People v. American Loan & Trust Co.*, 172 N. Y. 371, aff'd 70 App. Div. 579.

INTEREST.—While interest during the period of administration may be allowed against the insolvent corporation itself if the assets are sufficient for that purpose, no interest for that period can be allowed upon a preferred deposit to the detriment of unpreferred creditors. *People v. American Loan & Trust Co.*, 172 N. Y. 371, aff'd 70 App. Div. 579.

An agreement between a savings bank and several other banks that the savings bank should deposit its moneys ratably with them, that they should pay interest thereon and should pay no interest on the deposits of others, does not prevent the deposits of the savings bank from being preferred under the statute. *Matter of Patterson*, 18 Hun 221, aff'd 78 N. Y. 606 on opinion below. See also *Upton v. N. Y. & Erie Bank*, 13 Hun 260.

DEPOSIT IN NATIONAL BANK.—This section as applied to a deposit by a savings bank in a national bank is in conflict with U. S. Rev. Stat.

§ 5236 requiring ratable dividends to be made from the moneys of an insolvent national bank, and is therefore inoperative in such a case. *Davis v. Elmira Sav. Bank*, 161 U. S. 275, rev'g 142 N. Y. 590.

§ 279. Advertisements of unauthorized savings banks and the use of the word "savings" prohibited; exception as to school savings.

1. No bank, national banking association, trust company, individual, partnership, unincorporated association or corporation other than a savings bank or a savings and loan association shall make use of the word "saving" or "savings" or its equivalent, in its banking business, or advertise or put forth any advertising literature or sign containing the word "saving" or "savings," or its equivalent, nor shall any individual or corporation other than a savings bank in any way solicit or receive deposits as a savings bank. Any bank, national banking association, trust company, individual, partnership, unincorporated association or corporation violating this provision shall forfeit to the people of the state for every offense the sum of one hundred dollars for every day such offense shall be continued.

2. The principal or superintendent of any public school in the state of New York or any person designated for that purpose by the board of education or other school authority under which such school may be, or the superintendent or other designated head of any philanthropic agency incorporated for philanthropic purposes, if such agency be so authorized by certificate of the superintendent of banks, may collect from time to time small amounts of savings from the pupils of said school, or from the children or persons under the direction or guidance of such philanthropic agency, and deposit the same on the day of collection in some savings bank in the state or, in villages and cities in which there is no regularly established savings bank, in any savings and loan association, trust company, state or national bank located in the state and having an interest department, and upon the subsequent establishment of a savings bank in such village or city the deposit of such moneys or the continuance of deposits in any savings and loan association, trust company, state or national bank previously used as a depository of school savings shall not be deemed a violation of the provisions of this section. The money so collected shall be placed to the credit of the respective pupils, children or persons

from whom the money shall be collected, or if the amount collected at any one time shall be deemed insufficient for the opening of individual accounts, it shall be deposited in the names of said principal, superintendent or head of such philanthropic agency or designated person, in trust to be by him eventually transferred to the credit of the respective pupils, children or persons to whom the same belongs. In the meantime, said principal, superintendent or head of such philanthropic agency or designated person shall furnish to the bank a list giving the names, signatures, addresses, ages, places of birth, parents' names and such other data concerning the respective pupils, children or persons as the savings bank may require, and it shall be lawful to use the words "system of school savings banks" or "school savings banks" or "thrift funds" in circulars, reports and other printed or written matter used in connection with the purposes of this section.

Source.—Former § 160.

Amended by L. 1916, chap. 90, in effect March 30, 1916.

CROSS-REFERENCES.—Unauthorized use of word "savings," etc., in connection with corporate name, see Penal Law, §§ 302, 666, post; Gen. Corp. Law, § 8, subd. 1, post; the same, by foreign corporation, see Gen. Corp. Law, § 15.

THE OBJECT OF THE STATUTE is to prevent corporations, individuals and associations from advertising themselves as savings banks. The statute is not violated unless there be a soliciting of deposits in the character of, or under the pretense of being, a saving bank, or unless there be an advertising of business in such manner as to deceive persons into believing it to be that of a savings bank. *People v. Binghamton Trust Co.*, 139 N. Y. 185, 190; *Atty.-Gen. Rep.* (1908) 265.

WHAT CONSTITUTES A VIOLATION.—The statute is not violated by the issuance of a small metal box inscribed with directions "for savings in the _____ bank," or by the issuance of an account book bearing the statements "interest department of the _____ bank" and "interest at the rate of three per cent. per annum will be paid January first and July first, computed in the same manner as in savings banks." *Atty.-Gen. Rep.* (1902) 314.

In determining whether a corporation has violated this section, it is immaterial whether it has violated any provision of its charter or has exceeded its corporate powers in other respects. *People v. Binghamton Trust Co.*, 139 N. Y. 185, 191, *aff'g* 65 Hun 384.

INDIVIDUAL BANKER.—Under the act of 1875 (*Laws of 1875*, ch. 371, § 49), an individual might advertise and do business as a savings bank unless he were an "individual banker" who had availed himself of the statutes so as to be authorized to do a banking business. *People v. Doty*, 80 N. Y. 225.

TRUST COMPANY.—This section does not prevent a trust company from transacting its business on the general plan of a savings bank, so long as it does not hold itself out as a savings bank so as to deceive the public. *People v. Binghamton Trust Co.*, 139 N. Y. 135, *aff'g* 65 Hun 384.

NATIONAL BANKS.—Opinions that the prohibitions of this section apply to national banks doing business in the state. Atty.-Gen. Rep. (1907) 473; Atty.-Gen. Rep. (1908) 382.

SCHOOL SAVINGS BANKS.—The provisions of this section relating to the system of school savings banks were added after an opinion of the Attorney-General that such a system was illegal. Atty.-Gen. Rep. (1903) 462.

§ 280. Reduction of liability to depositors.

Whenever the losses of any savings bank resulting from a depreciation in the value of its securities or otherwise exceeds its undivided earnings and guaranty fund so that the estimated value of its assets is less than the total amount due its depositors, the supreme court may upon the petition of the savings bank, approved by the superintendent of banks, order a reduction of the liability to each depositor therein so as to divide the loss equitably among its depositors. If thereafter the savings bank shall realize from such assets a greater amount than was fixed in the order of reduction, such excess shall be divided among the depositors whose accounts were reduced, but to the extent of such reduction only.

Source.—New. The section is based on the case of *People v. Ulster County Sav. Bank*, 64 Hun 434, affirmed in 133 N. Y. 689, on opinion below, and upon Laws of 1882, ch. 409, § 278, since repealed.

CROSS-REFERENCES.—For similar provision as to savings and loan associations, see § 404; as to credit unions, see § 462.

§ 281. Charters of all savings banks conformed to this article.

The powers, privileges and duties, and all restrictions, heretofore or hereafter conferred or imposed upon any savings bank by whatever name known, by its charter or act of incorporation, are hereby abridged, enlarged or modified, as each particular case may require, in such manner that every such charter or act of incorporation shall be made to conform to the provisions of this article and to such amendments thereof as may be hereafter made. Every such savings bank shall possess the powers, rights and privileges, and be subject to the duties, restrictions and liabilities, conferred and imposed by this article, notwithstanding anything to the contrary in their respective charters or acts of incorporation.

The legality of investments heretofore made, or of transactions heretofore had, by any such savings bank, shall not be affected by the provisions of this article, nor shall the provisions of this chapter require the change of investments for those named in this article, except as the same can be done gradually by the sale or redemption of securities in such manner as to prevent loss or embarrassment in the business of such savings bank, or unnecessary loss or injury to the borrowers on such securities.

Source.—Former § 161.

Const. Art. VIII, § 4, requires that the legislature shall by general law conform all charters of saving banks, or institutions for savings, to a uniformity of powers, rights and liabilities.

ARTICLE VII.**Investment Companies.****Section 290. Incorporation; organization certificate.**

291. When corporate existence begins; conditions precedent to commencing business.
292. Deposit of securities with superintendent.
293. General powers.
294. Restrictions on powers.
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298. Reports to superintendent.
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301. Restrictions on officers, directors and employees.
302. Prohibition against encroachments on powers.
303. Conditions to be complied with by foreign corporations.
304. When foreign corporation may transact business in state.
305. Rights and privileges under license.
306. Deposit of securities by foreign corporation.
307. Foreign corporations to submit names of agents in state.
308. Effect of revocation of license.
309. Reincorporation of certain business corporations.

§ 290. Incorporation; organization certificate; amount of capital stock.

When authorized by the superintendent of banks, as provided by section twenty-three of this chapter, five or more persons may form a corporation to be known as an investment company. Such persons shall subscribe and acknowledge and submit to the superintendent of banks at his office an organization certificate in duplicate which shall specifically state:

1. The name by which the investment company is to be known.
2. The place where its business is to be transacted.
3. The amount of its capital stock and the number of shares into which such capital stock shall be divided, which capital stock shall amount to not less than one hundred thousand dollars.
4. The full name, residence and post-office address of each of the incorporators and the number of shares subscribed for by each.
5. The term of its existence, which may be perpetual.
6. The number of its directors, which shall not be less than five, and the names and addresses of the incorporators who shall be its directors until the first annual meeting of stockholders.

Such certificate may provide for the manner in which the stock of the corporation may be transferred and for the number of directors necessary to constitute a quorum.

Source.—Former § 280. This article has been revised as to form so as to conform in general arrangement to the other articles of this chapter, but few substantive changes have been inserted. The commission deemed it advisable not to recommend revisions of substance until the Court of Appeals should have rendered its decision in the case of *Jacobs v. Monaton Realty Inv. Corp.* (80 Misc. 649, 160 App. Div. 449), determining the extent to which certain corporations heretofore formed under the Business Corporations Law are infringing upon the powers granted to corporations under this article. The decision of the Court of Appeals in that case is reported in 212 N. Y. 48.

CROSS-REFERENCES.—Definition of "investment company," see § 2.

Powers and duties of superintendent with respect to incorporation, see §§ 21-24.

Similar provisions as to other persons and corporations seeking to engage in business under the Banking Law, see § 100 and cross-references there given.

As to qualifications of incorporators, see Gen. Corp. Law, § 4, post; corporate names, id., § 6, post; amended and supplemental certificates, id., § 7, post; extension of corporate existence, id., § 37, post.

As to transfer of stock, see Stock Corp. Law, § 50 et seq., post.

§ 291. When corporate existence begins; conditions precedent to commencing business.

When the superintendent shall have endorsed his approval on the organization certificate, as provided by section twenty-three of this chapter, the corporate existence of the investment company shall begin and it shall then have power to elect officers and transact such other business as relates to its organization. But it shall transact no other business until:

1. All of its capital stock shall have been fully paid in cash and an affidavit stating that it has been so paid, subscribed and sworn to by its two principal officers, shall have been filed in the clerk's office of the county in which its place of business is located, and a certified copy thereof in the office of the superintendent;

2. It shall have made the deposit with the superintendent required by section two hundred and ninety-two of this article;

3. The superintendent shall have duly issued to it the authorization certificate specified in section twenty-four of this chapter.

Source.—The provision as to when corporate existence shall begin is new. The requirement that the capital stock shall have been fully paid in cash comes from former § 281. The requirement of an affidavit that it has been so paid is derived from former § 13. The requirement as to the deposit of securities with the superintendent is derived from former § 281. That relating to the authorization certificate comes from former § 32.

CROSS-REFERENCES.—Similar provisions as to other persons and corporations engaging in business under the Banking Law, see § 103 and cross-references there given.

Forfeiture of corporate rights by not commencing business, see § 485.

§ 292. Deposit of securities with the superintendent.

Every investment company shall, until an order of the supreme court is obtained declaring its business closed, keep on deposit with

the superintendent of banks as a pledge of good faith and as a guaranty of compliance with the provisions of this chapter, interest bearing stocks or bonds of this state or of the United States to the amount of one thousand dollars, which shall be registered in the name of the superintendent of banks of the state of New York in trust for such investment company. The investment company, so long as it shall continue solvent and comply with the laws of the state, may be permitted by the superintendent to collect the interest on the securities so deposited, and from time to time to exchange such securities for others as provided by section thirty-five of this chapter, and may examine and compare such securities as provided by section thirty-six of this chapter.

Source.—Former § 281.

CROSS-REFERENCES.—Powers and duties of superintendent with regard to securities deposited with him, see §§ 33–37.

Deposit of securities by other persons and corporations subject to the Banking Law, see § 105 and cross-references there given.

§ 293. General powers.

In addition to the powers conferred by the general and stock corporation laws, an investment company shall, subject to the restrictions and limitations contained in this article, have the following powers:

1. To sell, offer for sale or negotiate bonds or notes secured by deed of trust or mortgages on real property situated in this state or outside of this state, or choses in action owned, issued, negotiated or guaranteed by it; to advance money upon the security of such bonds, notes or choses in action; to purchase or otherwise acquire such bonds, notes or choses in action and to pledge them to secure the payment of collateral trust bonds or notes; to sell or otherwise negotiate such collateral trust bonds or notes.

2. To receive money or property in instalments or otherwise from any person or persons, with or without an allowance of interest upon such instalments; to enter into any contract or undertaking with such persons for the withdrawal of such money or property, at any time, with any increase thereof, or for the payment to them or to any person of any sum of money at any time, either fixed or uncertain.

3. To engage in the business of receiving deposits, provided it shall have first made such deposit of securities with the superintendent of banks as is required of trust companies by section one hundred and eighty-four of this chapter.

4. To deduct interest in advance on loans at the rate of six per centum per annum provided such loans are secured by assign-

ments of choses in action or other evidences of indebtedness issued by it and to be paid for in uniform monthly or weekly instalments. To charge for a loan exceeding fifty dollars made pursuant to this subdivision one dollar for each fifty dollars or fraction thereof loaned for expenses including any examination or investigation of the character and circumstances of the borrower, co-maker or surety, and the drawing and taking the acknowledgment of necessary papers, or other expenses incurred in making the loan; provided, that no fee collected hereunder shall exceed five dollars. If any such loan made pursuant to this investigation is fifty dollars or less, such charge shall not be more than one dollar. Whenever an additional loan shall be made to anyone borrowing within three months of the date of a previous loan, no further charge for examination, investigation, drawing of necessary papers and taking acknowledgments, shall be made against him under any pretext whatever. No such charge shall be collected unless a loan shall have been made as the result of such examination or investigation.

5. To impose a fine of five cents for each default in the payment of one dollar or a fraction thereof at the time any periodical instalment upon a certificate assigned as collateral security for the payment of a loan made pursuant to subdivision four of this section becomes due, provided, however, that such fines shall not be cumulative; that no such fine shall be imposed for more than four successive defaults and that the aggregate of such fines collected in connection with any such loan or renewal thereof shall not exceed one dollar.

6. To establish branches pursuant to section fifty-one of this chapter.

Source.—Former § 282. The substance of subdivisions 3 and 4 was added as a new paragraph to former § 282 by chapter 628, Laws of 1913, for the purpose of legalizing the Morris general plan of industrial savings and loans. Subdivision 5 is new, and was inserted for the purpose of permitting branches to be established under the Morris plan.

Subd. 4 amended, subd. 5 added and subd. 5 made subd. 6 by L. 1915, ch. 139. In effect March 30, 1915.

Subd. 1 amended by L. 1916, chap. 247. In effect April 17, 1916.

CROSS-REFERENCES.—Powers of other corporations organized under the Banking Law, see § 106 and cross-references there given.

Prohibition against encroachments on powers, see § 302.

General powers of corporation, see Gen. Corp. Law, §§ 10, 11; as to acquisition of real property, *id.*, §§ 13, 14.

CORPORATIONS NOT ORGANIZED UNDER BANKING LAW.—A real estate company organized under the Business Corporations Law cannot exercise the powers conferred by this section. *Atty.-Gen. Rep.* (1906) 513.

A corporation organized under the Business Corporations Law cannot engage in the business of issuing collateral trust income bonds secured by real property the title of which is in a trustee under a trust agreement. *Atty.-Gen. Rep.* (1912), vol. 2, p. 188.

A corporation organized under the General Corporation Law or the Stock Corporation Law cannot exercise the powers of an investment company. Atty.-Gen. Rep. (1910) 851.

The superintendent should not license a foreign corporation which has the power both to do a banking and trust company business and also to act as a real estate company. Atty.-Gen. Rep., February 8, 1915.

Corporations, foreign and domestic, selling bonds secured by mortgages on real property situated in this State or outside of this State are investment companies and bound to comply with the Banking Law. Atty.-Gen. Rep., April 14, 1916.

Where a corporation organized under the Business Corporations Law received annual payments of money for which it issued certificates whereby it agreed to repay the holder a specified sum at the end of ten years, it was held that, in the absence of any showing that such moneys were not borrowed for a lawful purpose of the corporation, this did not constitute a transaction of business as an investment company in violation of the Banking Law. *Jacobs v. Monaton Realty Inv. Corp.*, 212 N. Y. 48, reversing 160 App. Div. 449.

DISCRETION TO REFUSE CERTIFICATE.—Opinion that the superintendent has discretion to refuse an authorization certificate where there is an avowed purpose on the part of the corporation to do a second mortgage business. Atty.-Gen. Rep. (1910) 851.

§ 294. Restrictions on powers of investment companies.

An investment company shall not

1. Exercise the powers conferred by both subdivisions three and four of section two hundred and ninety-three of this article; but may exercise separately the powers conferred by either of such subdivisions.

2. Hold at one time the obligations of one person for more than five thousand dollars, secured by assignments of choses in actions or other evidences of indebtedness issued by it and to be paid for in uniform monthly or weekly instalments.

3. Make any loan under the provisions of subdivision four of section two hundred and ninety-three of this article for a longer period than one year from the date thereof.

4. Deposit any of its funds with any other moneyed corporations unless such other corporation has been designated as such depository by a vote of a majority of the directors of the investment company, exclusive of any director who is an officer, director or trustee of the depository so designated.

5. Be the holder of any shares of its own capital stock unless such stock shall have been taken to prevent loss upon a debt previously contracted in good faith, and stock so acquired shall, within six months from the time of its acquisition, be sold or disposed of at public or private sale; nor shall it, either directly or indirectly, make any discount to any person for the purpose of enabling him to pay for or hold shares of its stock either subscribed for or purchased by him. Any investment company making any such discount shall forfeit to the people of the state twice the amount of such discount.

Source.—Subdivisions 1, 2 and 3 are derived from former § 282. Subdivision 4 is from former § 27, subd. 5. Subdivision 5 is from former § 27, subd. 8.

CROSS-REFERENCES.—Similar provisions as to deposit of funds of other corporations subject to the Banking Law, see § 111 and cross-references there given.

Similar provisions as to acquisition by other corporations of their own stock, see §§ 108, 190.

LIEN ON STOCK FOR STOCKHOLDER'S INDEBTEDNESS.—Subdivision 5 of this section does not affect the right of the corporation under Stock Corp. Law, § 51, post, to refuse to allow a transfer of stock by a stockholder indebted to the corporation. *Strahmann v. Yorkville Bank*, 148 App. Div. 8, *aff'd* 210 N. Y. 536.

PURCHASE OF OWN STOCK.—Under § 496 the corporation can purchase the stock of dissenting stockholders in case of merger.

§ 295. Restrictions as to entries in books.

1. No investment company shall by any system of accounting or any device of bookkeeping, directly or indirectly enter any of its assets upon its books in the name of any other individual, partnership, unincorporated association or corporation, or under any title or designation that is not truly descriptive thereof.

2. Every investment company shall conform its methods of keeping its books and records to such orders in respect thereto as shall have been made and promulgated by the superintendent pursuant to section fifty-six of this chapter. Any investment company that refuses or neglects to obey such order shall be subject to a penalty of one hundred dollars for each day it so refuses or neglects.

Source.—Subdivision 1 is new. Subdivision 2 comes from former § 8.

CROSS-REFERENCES.—Similar provisions as to other corporations subject to the Banking Law, see § 109 and cross-references there given.

§ 296. Change of location.

Any investment company may make a written application to the superintendent of banks for leave to change its place of business to another place in the same county. The application shall state the reasons for such proposed change, and shall be signed and acknowledged by a majority of its board of directors and accompanied by the written assent thereto of stockholders owning

at least two-thirds in amount of its stock. If the proposed place of business is within the limits of the village, borough or city, if in a city not divided into boroughs, in which the principal place of business of the investment company is located, such change may be made upon the written approval of the superintendent; if beyond such limits, notice of intention to make such application, signed by the two principal officers in charge of its affairs shall be published once a week for two successive weeks immediately preceding such application in a newspaper published in the city of Albany in which notices by state officers are required by law to be published, and in a newspaper to be designated by the superintendent, published in the county in which the place of business of such investment company is located. If the superintendent shall grant his certificate authorizing the change of location, as provided in section fifty of this chapter, the investment company shall cause such certificate to be published once in each week for two successive weeks in the newspapers in which the notice of application was published. When the requirements of this section shall have been fully complied with, the investment company may, upon or after the day specified in the certificate, remove its property and effects to the location designated therein, and thereafter its principal place of business shall be the location so specified; and it shall have all the rights and powers in such new location which it possessed at its former location.

Source.—Former § 31: This section is identical with § 119 relating to banks. See the annotations to the latter section.

§ 297. Communications from banking department must be submitted to directors and noted in minutes.

Each official communication directed by the superintendent of banks or one of his deputies to an investment company or to any officer thereof, relating to an examination or investigation conducted by the banking department or containing suggestions or recommendations as to the conduct of the business of the investment company, shall be submitted, by the officer receiving it, to the board of directors at the next meeting of such board, and duly noted in the minutes of the meetings of such board.

Source.—Former § 41. The section is identical with § 132 relating to banks. See the annotations to the latter section.

§ 298. Reports to superintendent; penalty for failure to make.

On or before the first day of February in each year, every investment company and every foreign corporation licensed by the superintendent to transact the business of an investment company in this state, shall make a written report to the superintendent of banks which shall contain a statement of its condition on the morning of the first day of January in said year and shall be in the form and contain the matters prescribed by the superintendent. Every such report shall be verified by the oaths of the two principal officers in charge of the affairs of the investment company or foreign corporation at the time of such verification, which shall state that the report is true and correct in all respects to the best of the knowledge and belief of the persons verifying it, and that the usual business of the investment company or foreign corporation has been transacted at the location required by this article and not elsewhere.

Every such investment company and foreign corporation shall also make such other special reports to the superintendent as he may from time to time require, which shall be in such form and filed at such date as may be prescribed by the superintendent and shall, if required by him, be verified in such manner as he may prescribe.

If any such investment company or foreign corporation shall fail to make any report required by this section on or before the day designated for the making thereof, or shall fail to include therein any matter required by the superintendent, it shall forfeit to the people of the state the sum of ten dollars for every day that such report shall be delayed or withheld, and for every day that it shall fail to report any such omitted matter, unless the time therefor shall have been extended by the superintendent as provided by section forty-nine of this chapter.

Source.—Former §§ 21, 284.

CROSS-REFERENCES.—Powers and duties of superintendent with regard to reports, see §§ 42, 43.

Reports of other persons and corporations doing business under the Banking Law, see § 133 and cross-references there given.

§ 299. Liability of investment company for assessments by superintendent.

When the superintendent, pursuant to the powers conferred on him by article two of this chapter, shall have levied any assessment upon any investment company and shall have duly notified such investment company of the amount thereof, the amount so assessed shall become a liability of and shall be paid by such investment company to the superintendent.

Source.—New. This section is identical with § 135 relating to banks. See the annotations to that section.

§ 300. Preservation of records of investment company.

Every investment company shall preserve all its records of final entry, including cards used under the card system and deposit tickets, for a period of at least six years from the date of making the same or from the date of the last entry thereon.

Source.—New. This section is identical with § 136 relating to banks. See the annotations to that section.

§ 301. Restrictions on officers, directors and other employees.

No officer, director, clerk or other employee of any investment company, and no person in any way interested or concerned in the management of its affairs, shall as individuals discount, or directly or indirectly, make any loan upon any note or other evidence of debt, which he shall know to have been offered for discount to such corporation, and to have been refused. Every person violating the provisions of this subdivision, shall, for each offense, forfeit to the people of the state twice the amount of the loan which he shall have made.

No officer, director, clerk or other employee of any investment company shall borrow, directly or indirectly, from such investment company any sum of money without the written approval of a majority of the board of directors thereof filed in the office of the investment company or embodied in a resolution adopted by a majority vote of such board exclusive of the director to whom the loan is made. If an officer, director, clerk or other employee of any investment company shall own or control a majority of the stock of any other corporation a loan to that corporation shall be

considered for the purpose of this subdivision as a loan to such officer, director, clerk or other employee. Every person violating this provision shall, for each offense, forfeit to the people of the state twice the amount which he shall have borrowed.

Source.—The first paragraph is from former § 27, subd. 6, the second from former § 27, subd. 7.

CROSS-REFERENCES.—Similar provisions as to other corporations subject to the Banking Law, see § 139 and the annotations thereto.

§ 302. Prohibition against encroachments on certain powers of investment companies.

No person shall act in this state as the representative of any foreign corporation in transacting the business described in this chapter as the business of an investment company unless such corporation shall have complied with the provisions of this article relating to such corporations.

Source.—Former § 286.

CROSS-REFERENCES.—Prohibition against encroachments on powers of banks, see § 140; of trust companies, see § 223.

Criminal liability for acting for unauthorized foreign corporation, see Penal Law, § 663. post.

§ 303. Conditions to be complied with by foreign corporation applying for license.

Every foreign corporation before being licensed by the superintendent of banks to transact in this state the business of an investment company, or any part thereof, and annually thereafter during the month of November shall subscribe and acknowledge and submit to the superintendent of banks at his office, an application certificate in duplicate, which shall specifically state:

1. The name of such foreign corporation.
2. The place where its business is to be transacted in this state.
3. The amount of its capital stock actually paid in cash and the amount subscribed for and unpaid.
4. A complete and detailed statement of its financial condition as of a date within sixty days prior to the date of such application certificate.

At the time such application certificate is first submitted to the superintendent, such corporation shall also submit a duly authenticated copy of its charter.

Source.—Former § 284. The limitation of time as of which its financial statement is made up is new. Requirement that authenticated copy of charter be submitted is also new.

CROSS-REFERENCES.—Similar provision as to foreign banks, see § 144.

§ 304. When foreign corporation may transact business of an investment company in this state.

No foreign corporation shall transact in this state the business defined in this chapter as the business of an investment company or any part thereof, unless such corporation shall have

1. Been authorized by its charter to carry on such business and shall have complied with the laws of the state or country under which it is incorporated;

3. Made the deposit with the superintendent of banks required by section three hundred and six of this article;

3. Designated the superintendent of banks, by an instrument in writing duly executed, its true and lawful attorney upon whom all process in any action or proceeding by any resident of the state against it may be served with the same effect as if it were a domestic corporation and had been lawfully served with process within the state;

4. Received a license duly issued to it by the superintendent as provided in section twenty-seven of this chapter.

Source.—Former § 33. The provision for designation of the superintendent as attorney to accept service of process is taken from former § 288.

The provisions of former § 283, attempting to regulate non-resident individuals in the same manner as foreign corporations without regulating in the same manner citizens of this state, have been eliminated as being in conflict with the federal constitution, Art. IV, § 2.

CROSS-REFERENCES.—Licenses and renewals, see § 27.

Superintendent as attorney to accept service of process, see § 28.

Revocation of license, see § 29.

Similar provision as to foreign banks, see § 145.

Service of process on foreign corporations, see Code Civ. Proc., § 432.

WHAT FOREIGN CORPORATIONS MAY NOT BE LICENSED.—A foreign corporation which has power under its charter to engage in the business of a bank or trust company may not be licensed to transact business as an investment company in this state. Op. Atty.-Gen., Feb. 8, 1915.

BRINGING SUIT NOT TRANSACTING BUSINESS.—The mere bringing of an action by a foreign corporation in courts of this state on a negotiable instrument is not a transacting of business within the meaning of this section. *Citizens' State Bank v. Cowles*, 89 App. Div. 281, reversed on other grounds in 180 N. Y. 346; *Western Nat. Bank v. Kelly*, 48 Misc. 366.

§ 305. Rights and privileges of foreign corporation under license.

When the superintendent shall have issued a license to any such foreign corporation, it may engage in the business of an investment company at the location specified in such license until the first day of January succeeding the date of such license, subject to all the provisions of article two of this chapter relating to foreign investment corporations doing business in this state.

Source.—Former § 33.

CROSS-REFERENCES.—Powers and duties of superintendent with regard to licensing foreign corporations, see §§ 27-29.

Power to make examinations, see § 39.

Power to require reports, see § 42.

Similar provision as to foreign banks, see § 146.

§ 306. Deposit of securities by foreign corporation with superintendent.

Every such foreign corporation, before receiving a license to transact business in this state, shall deposit with the superintendent in trust as security for the depositors with and creditors of such corporation in this state, registered public stocks or bonds of the United States or this state or of any city, county, town, village or free school district in this state authorized by the legislature to be issued, of the value of one hundred thousand dollars. Such foreign corporation so long as it shall continue solvent and comply with the laws of this state, may be permitted by the superintendent to collect the interest on the securities so deposited and from time to time to exchange such securities for others, as provided by section thirty-five of this chapter, and may examine and compare such securities, as provided by section thirty-six of this chapter.

Source.—Former § 14.

CROSS-REFERENCES.—Powers and duties of superintendent with regard to securities, see §§ 33-37.

Deposit of securities by other persons and corporations subject to the Banking Law, see § 105, and cross-references there given.

§ 307. Foreign corporation to submit names of its agents in this state.

Every foreign corporation, duly licensed by the superintendent, to transact in this state the business of an investment company, or any part thereof, shall within thirty days after the date of such license, submit to the superintendent of banks a statement verified by two of its principal officers, which shall contain the full name and business address of every individual, partnership or unincorporated association, who is acting or whom it proposes to have act as its agent or representative in this state. Whenever any such corporation shall engage any person to act for it in this state and the name and address of such person is not contained in such verified statement submitted to the superintendent, such foreign corporation shall forthwith submit to the superintendent an amended statement verified in the same manner as the original. A violation of this provision shall subject such foreign corporation to a forfeiture of one thousand dollars for each offense.

Source.—Former § 286. "Verified by two of its principal officers" is new. The requirement that the names of corporations in this state acting as agents of foreign investment companies shall be filed with the superintendent has been eliminated, as a domestic corporation cannot so act without complying with the provisions of this article.

§ 308. Effect of revocation by superintendent of license to foreign corporation.

Whenever the superintendent shall have revoked his license of any such foreign corporation and shall have taken the action to make such revocation effective specified in section twenty-nine of this chapter, all the rights and privileges of such foreign corporation to transact the business in this state of an investment company, or any part thereof, shall forthwith cease and determine.

Source.—Former § 287.

CROSS-REFERENCES.—Revocation by superintendent, see § 29.

Similar provision as to foreign banks, see § 146.

§ 309. Reincorporation of certain corporations organized under the business corporations law.

Any business corporation heretofore organized under the business corporations law whose corporate purposes include the trans-

action of any part of the business of an investment company and which has not heretofore sold any securities issued by it or guaranteed any securities sold by it or transacted any business which a savings and loan association is empowered to transact, may, within ninety days after this act takes effect, become an investment company under its former name with all the powers and subject to all the obligations and duties of investment companies organized under the provisions of this article. Such a corporation desiring to become an investment company shall proceed in the following manner:

1. It shall call a meeting of its stockholders upon not less than twenty days' written notice to each stockholder, which notice shall be served personally or by mail, postage prepaid, directed to each stockholder at his last known post-office address, and shall contain a statement of the purpose for which such meeting is called. Proof by affidavit of the due service of such notice shall be filed in the office of the corporation at or before the time of such meeting.

2. At the meeting so called the stockholders of such corporation may by a vote of at least two-thirds of the entire capital stock direct that such corporation shall be transformed into an investment company. In the event that such action is taken by the prescribed vote, a resolution may be adopted directing not less than five of the stockholders of such corporation who shall be designated by name in such resolution to execute an organization certificate in the form and manner required by section two hundred ninety of this article. The proceedings of such meeting shall be entered in the minutes of such corporation.

3. The persons named in such resolution shall thereafter subscribe and acknowledge in duplicate the said organization certificate and attach thereto copies of the minutes of such meeting duly verified by the president and secretary of the meeting, and duplicates of the affidavits of service of the notice of such meeting, and shall submit both of such duplicate certificates to the superintendent of banks at his office.

4. When the superintendent shall have endorsed his approval on the organization certificate as provided by section twenty-three of this chapter, such corporation shall be held and regarded as an investment company subject to the provisions of this article. It

shall transact no business as such investment company other than that relating to its organization until it shall have complied with the conditions precedent to commencing business prescribed by section two hundred and ninety-one of this article.

At the time when the corporate existence of such investment company begins, all the property of such corporation shall immediately by act of law and without any conveyance or transfer, be vested in and become the property of such investment company, but such reincorporation shall not be construed as a ratification of any ultra vires contracts theretofore entered into by such corporation. The persons named in such organization certificate shall be the directors of such investment company until the first annual election of directors thereafter, and shall have power to take all necessary measures to perfect its organization and to adopt such regulations concerning its business and management as may be proper and not inconsistent with law.

Source.—New. The section is substantially identical with § 343 authorizing personal loan associations to reincorporate as personal loan companies. See also § 138 providing for change from a state bank to a trust company.

This section was inserted for the purpose of making it possible for corporations organized under the Business Corporations Law and buying and selling to the public securities issued by others to reorganize under this article without losing the advantages of their present corporate identity.

Corporations doing an investment company business are subject to the supervision and control of the Superintendent of Banks, although they were incorporated under other laws prior to the passage of the act requiring them to incorporate under the Banking Law. Op. Atty.-Gen., Feb. 26, 1914.

ARTICLE VIII**Safe Deposit Companies.**

Section 315. Incorporation; organization certificate.

- 316. When corporate existence begins; conditions precedent to commencing business.
- 317. General powers.
- 318. Additional power of company with capital of one hundred thousand dollars.
- 319. Limitations on powers.
- 320. Books and records.
- 321. Change of location.
- 322. Rights and liabilities of stockholders.
- 323. Assessment of stockholders when capital impaired.
- 324. Annual meeting of stockholders.
- 325. Qualifications and disqualifications of directors.
- 326. Oath of directors.
- 327. Tenure of office of directors.
- 328. Communications from banking department.
- 329. Reports to superintendent.
- 330. Liability for assessments by superintendent.
- 331. Special remedies of safe deposit companies.

§ 315. Incorporation; organization certificate; amount of capital stock.

When authorized by the superintendent of banks as provided by section twenty-three of this chapter, five or more persons may form a corporation to be known as a safe deposit company. Such persons shall subscribe and acknowledge and submit to the superintendent of banks at his office an organization certificate in duplicate which shall specifically state:

- 1. The name by which the safe deposit company is to be known.
- 2. The place where its business is to be transacted.
- 3. The amount of its capital stock, and the number of shares into which such capital stock shall be divided, which capital stock shall amount to not less than:

(a) One hundred thousand dollars and not more than one million dollars if the place where its business is to be transacted is in a city the population of which is one hundred thousand or more;

(b) Ten thousand dollars and not more than one million dollars elsewhere in the state.

4. The names and places of residence of the incorporators and the number of shares subscribed for by each.

5. The term of its existence, which may be perpetual.

6. The number of its directors, which shall not be less than five nor more than thirteen, and the names of the incorporators who shall be its directors until the first annual meeting of stockholders. The incorporators named as directors must possess the qualifications of directors as to citizenship and residence specified in section three hundred and twenty-five of this article, and the certificate shall recite that such qualifications are possessed by such incorporators.

Such certificate may provide for the manner in which the stock of the corporation may be transferred and for the number of directors necessary to constitute a quorum.

Source.—Former § 300. Limitation on number of directors is from former § 301 relating to directors. Duration of existence of corporation changed from “fifty years” to perpetual.

CROSS-REFERENCES.—Definition of safe deposit company, see § 2.

Powers and duties of superintendent with respect to incorporation, see §§ 21–24.

Similar provisions as to other corporations seeking to engage in business under the Banking Law, see § 100 and cross-references there given.

Ownership of safe deposit company by bank, see § 106, subd. 5; by trust company, see § 190, subd. 10.

Power of banks and trust companies to receive property for safe keeping, see §§ 106, subd. 7, 185, subd. 11.

As to qualifications of incorporators, see Gen. Corp. Laws, § 4, post; corporate names, id., § 6, post; amended and supplemental certificates, id., § 7, post; extension of corporate existence, id., § 27, post.

Transfer of stock, see Stock Corp. Law, §§ 50 et seq., post.

CANNOT ORGANIZE UNDER BUSINESS CORPORATIONS LAW.—The Secretary of State is not authorized to file a proposed certificate of incorporation under the Business Corporations Law which shows that one of the objects of the proposed corporation is to receive moneys and other property for safe-keeping. *Atty.-Gen. Rep. (1910) 419.*

A corporation desiring to organize for the purpose of storing “old records, documents and papers” must be organized under this section and not under the Business Corporations Law, which expressly excludes from its operation a corporation provided for by the Banking Law. *Atty.-Gen. Rep. (1910) 836.*

DUTY OF SAFE DEPOSIT COMPANY AS BAILEE and liability for allowing contents of box to be removed under color of legal process, see *Roberts v. Stuyvesant Safe Deposit Co.*, 123 N. Y. 57.

§ 316. When corporate existence begins; conditions precedent to commencing business.

When the superintendent of banks shall have endorsed his approval on the organization certificate as provided by section twenty-three of this chapter, the corporate existence of the safe deposit company shall begin, and it shall then have power to elect officers and to transact such other business as relates to its organization. But the safe deposit company shall transact no other business until:

1. All of its capital stock shall have been fully paid in cash and an affidavit stating that it has been so paid, subscribed and sworn to by its two principal officers, shall have been filed in the clerk's office of the county in which its principal office is located and a certified copy thereof filed in the office of the superintendent;

2. The superintendent shall have duly issued to it the authorization certificate specified in section twenty-four of this chapter.

Source.—The provision as to when corporate existence shall begin is new. The requirement that the capital stock shall have been fully paid in cash is from former § 300, and that requiring an affidavit that it has been so paid is taken from former § 13. The requirement as to the authorization certificate comes from former § 32.

CROSS-REFERENCES.—Similar provisions as to other corporations engaging in business under the Banking Law, see § 103 and cross-references there given.

Forfeiture of corporate rights by not commencing business, see § 485.

§ 317. General powers.

In addition to the powers conferred by the general and stock corporation laws, every safe deposit company shall, subject to the limitations and restrictions contained in this article, have the power:

1. To receive as depositary for hire or as bailee for safe keeping and storage, money or any valuable personal property; and to guarantee the safety of any property so deposited with it.

2. To let vaults, safes and other receptacles upon premises occupied by such safe deposit company.

Source.— Former § 300. "Upon premises occupied by such safe deposit company" is new.

CROSS-REFERENCES.— Powers of other corporations organized under the Banking Law, see § 106 and cross-references there given.

Power of banks and trust companies to receive property for safe keeping, see §§ 106, subd. 7, 185, subd. 11.

General powers of corporations, see Gen. Corp. Law, §§ 10, 11; as to acquisition of real property, id., §§ 13, 14.

§ 318. Additional power of safe deposit company with capital of one hundred thousand dollars or more.

Any safe deposit company having a capital of one hundred thousand dollars or more, provided it has obtained the written approval of the superintendent of banks as provided in section fifty-one of this chapter, may open and maintain one or more branch offices, specified in such written approval, in the city or village stated in its organization certificate as its place of business.

Source.— Former § 300.

CROSS-REFERENCES.— Powers and duties of superintendent with regard to branch offices, see § 51.

As to branch offices of other corporations organized under the Banking Law, see § 110 and cross-references there given.

§ 319. Limitations upon the powers of safe deposit companies.

No safe deposit company shall:

1. Lend money, or make any advance, on any property left in its possession, or belonging to others.

2. Open or maintain any branch offices, except as provided in section three hundred and eighteen of this article.

Source.— Former § 300.

§ 320. Books and records.

Every safe deposit company shall conform its methods of keeping its books and records to such orders in respect thereto as shall have been made and promulgated by the superintendent pursuant

to section fifty-six of this chapter. Any safe deposit company that refuses or neglects to obey such order shall be subject to a penalty of one hundred dollars for each day it so refuses or neglects.

Source.—Former § 8.

CROSS-REFERENCES.—Similar provision as to other corporations subject to the Banking Law, see § 109 and cross-references there given.

§ 321. Change of location.

Any safe deposit company may make a written application to the superintendent of banks for leave to change its place of business to another place in the same village, borough or city, if in a city not divided into boroughs. The application shall state the reasons for such proposed change, and shall be signed and acknowledged by a majority of its board of directors and accompanied by the written assent thereto of stockholders owning at least two-thirds in amount of its stock. Such change may be made upon the written approval of the superintendent, as provided in section fifty of this chapter.

Source.—Former § 31.

CROSS-REFERENCES.—Similar provisions as to other corporations subject to the Banking Law, see § 119 and cross-references there given.

§ 322. Rights and liabilities of stockholders; who liable as stockholders; who may enforce liability; within what time action must be commenced.

The rights, powers and duties of stockholders of safe deposit companies shall be as prescribed in the general corporation law and the stock corporation law, but the individual liability of such stockholders for the contracts, debts and engagements of the safe deposit company and the time within which an action may be instituted to enforce such liability shall be governed exclusively by the provisions of this section and section eighty of this chapter.

The stockholders of every safe deposit company shall be individually responsible, equally and ratably and not one for another, for all contracts, debts and engagements of the safe deposit company, to the extent of the amount of their stock therein, at the par value thereof, in addition to the amount invested in such

shares. An action to enforce such liability must be brought within six years after the cause of action has accrued. The term "stockholder" as used in this section shall apply to:

1. Such persons as appear by the books of the corporation to be stockholders;

2. Every owner of stock legal or equitable, although the same may be on such books in the name of another person, provided, however, that such term shall not apply to a person holding stock as collateral security for the payment of a debt and not appearing by the books of the corporation to be the owner and holder thereof in his own right, or to a person holding stock in a bona fide fiduciary capacity and not appearing by the books of the corporation to be the owner and holder thereof in his own right, unless such fiduciary shall have invested the funds in his care in violation of law or of the terms under which said funds are held by him, in which case he shall be personally liable as a stockholder.

No person who has in good faith, and without any intent to evade his liability as a stockholder, caused his stock to be transferred on the books of the corporation when it is solvent to any resident of this state of full age previous to any default in the payment of any debt or liability of the safe deposit company, shall be subject to any personal liability for any contracts, debts or engagements of the safe deposit company.

In case the superintendent of banks shall have taken possession of the property and business of a safe deposit company under the provisions of section fifty-seven of this chapter or a permanent receiver thereof shall have been appointed, all actions or proceedings to enforce the liability of stockholders under this section shall be taken and prosecuted only in the name of the superintendent or the receiver, as the case may be, unless the superintendent or receiver shall refuse to take such action or proceeding upon proper request in writing made by any creditor, or shall have failed or neglected to commence such action or proceeding within sixty days after the receipt of such request, and in that event such action or proceeding may be taken by any creditor of the safe deposit company. But no such action shall be brought by a creditor until a judgment shall have been recovered by him against

the safe deposit company and an execution thereon shall have been returned unsatisfied in whole or in part.

Source.—New, being a substitute for former § 303 and changing the character of the liability of stockholders from that contained in former section. This section is identical with § 120 relating to banks, and § 206 relating to trust companies. Under former § 303 the liability of stockholders of a safe deposit company was joint and several. The distinction is pointed out in *Mosler Safe Co. v. Guardian Trust Co.*, 208 N. Y. 524, aff'g 153 App. Div. 117.

CROSS-REFERENCES.—Enforcement of liability by superintendent, see § 80.

For other cross-references and authorities bearing on the section, see annotations to § 120.

§ 323. Assessment of stockholders to make good impairment of capital; sale of stock.

Whenever the superintendent of banks shall have made requisition upon any safe deposit company pursuant to section fifty-six of this chapter to make good the amount of an impairment of its capital, the directors of the safe deposit company shall immediately give notice of such requisition to each stockholder of the amount of the assessment which he must pay for the purpose of making good such deficiency, by a written or printed notice mailed to such stockholder at his place of residence, or served personally upon him. If any stockholder shall refuse or neglect to pay the assessment specified in such notice within sixty days from the date thereof, the directors of such safe deposit company shall have the right to sell to the highest bidder at public auction the stock of such stockholder, after giving previous notice of such sale for two weeks in a newspaper of general circulation published in the county where the principal office of such safe deposit company is located; or such stock may be sold at private sale, and without such published notice, provided, however, that before making a private sale thereof an offer in writing to purchase such stock shall first be obtained, and a copy thereof served upon the owner of record of the stock sought to be sold either personally or by mailing a copy of such offer to such owner at his place of residence or the address furnished by him to the safe deposit company; and if, after service of such offer, such owner shall still refuse or neglect to pay such assessment within two weeks

from the time of service of such offer, the said directors may accept such offer and sell such stock to the person or persons making such offer, or to any other person or persons making a larger offer than the amount named in the offer submitted to such stockholder; but said stock shall in no event be sold for a smaller sum than the valuation put on it by the superintendent in his determination and certificate, which valuation shall not be less than the amount of the assessment called for and the necessary costs of sale. Out of the avails of the stock sold the directors shall pay the necessary costs of sale and the amount of the assessment called for thereon. The balance, if any, shall be paid to the person or persons whose stock has been thus sold. A sale of stock as herein provided shall effect an absolute cancellation of the outstanding certificate or certificates evidencing the stock so sold, and shall render the same null and void and a new certificate or certificates shall be issued to the purchaser or purchasers of said stock.

Source.—Former § 17. The section is identical with § 121 relating to banks. See the annotations to that section.

§ 324. Annual meeting of stockholders; notice.

The stockholders of every safe deposit company shall hold an annual meeting for the election of directors on the second Tuesday in January or within ten days thereafter. Notice of the time and place of such meeting shall be published not less than ten days previous thereto in a newspaper published in the city or village, in which the safe deposit company is located.

Source.—Former § 301. Date of annual meeting has been added to conform to other moneyed corporations.

CROSS-REFERENCES.—Similar provisions as to other corporations organized under the Banking Law, see § 122 and cross-references there given.

General provisions regarding election of corporate directors, see Gen. Corp. Law, §§ 23–32, post.

General provisions regarding directors of stock corporations, see Stock Corp. Law, §§ 25–35, post.

Misconduct of directors, see Penal Law, §§ 290, 297, 664, 665, 668, post.

§ 325. Qualifications and disqualifications of directors.

Each director must be a citizen of the United States, and at least a majority of the directors must be residents of this state at the time

of their election and during their continuance in office. Every director of a safe deposit company shall be a stockholder of the corporation in his own right; and every person elected to be a director who, after such election, shall cease to be a stockholder in his own right, shall cease to be a director of the safe deposit company and his office shall be vacant.

Source.—Former § 301. Last clause is new.

CROSS-REFERENCES.—Similar provisions as to other corporations subject to the Banking Law, see § 123 and cross-references there given.

§ 326. Oath of directors.

Each director, when appointed or elected, shall take an oath that he will, so far as the duty devolves on him, diligently and honestly administer the affairs of the safe deposit company, and will not knowingly violate, or willingly permit to be violated, any of the provisions of law applicable thereto, and that he is the owner in good faith and in his own right, of shares of stock, subscribed by him or standing in his name on the books of the safe deposit company. Such oath shall be subscribed by the director making it, and certified by an officer authorized by law to administer oaths, and immediately transmitted to the superintendent of banks.

Source.—New. Is adapted from § 124 relating to banks. See the annotations to that section.

§ 327. Tenure of office of directors.

The directors shall, unless sooner removed or disqualified, hold office until the next annual meeting of stockholders, and until their successors are elected and have qualified.

Source.—Former § 301. The section is identical with § 125 relating to banks. See the annotations to that section.

§ 328. Communications from banking department must be submitted to directors and noted in minutes.

Each official communication directed by the superintendent of banks or one of his deputies to a safe deposit company or to any officer thereof, relating to an investigation or examination conducted by the banking department or containing suggestions or recommendations as to the conduct of the business of the corpora-

tion, shall be submitted, by the officer receiving it, to the board of directors at the next meeting of such board, and duly noted in the minutes of the meetings of such board.

Source.—Former § 41. The section is identical with § 132 relating to banks. See the annotations to that section.

§ 329. Reports to superintendent; penalty for failure to make.

On or before the first day of February in each year, every safe deposit company shall make a written report to the superintendent of banks which shall contain a statement of its condition on the morning of the first day of January in said year. Every such report shall be verified by the oaths of the two principal officers in charge of the affairs of the safe deposit company at the time of such verification, which shall state that the report is true and correct in all respects to the best of the knowledge and belief of the persons verifying it, and that the usual business of the safe deposit company has been transacted at the location required by this article and not elsewhere.

Every safe deposit company shall also make such other special reports to the superintendent as he may from time to time require, which shall be in such form and filed at such date as may be prescribed by the superintendent and shall, if required by him, be verified in such manner as he may prescribe.

If any safe deposit company shall fail to make any report required by this section on or before the day designated for the making thereof, or shall fail to include therein any matter required by the superintendent, it shall forfeit to the people of the state the sum of ten dollars for every day that such report shall be delayed or withheld, and for every day that it shall fail to report any such omitted matter, unless the time therefor shall have been extended by the superintendent as provided by section forty-nine of this chapter.

Source.—Former § 21. The second paragraph is new.

CROSS-REFERENCES.—Powers and duties of superintendent with reference to reports, see §§ 42, 43.

Similar provisions as to other persons and corporations subject to the Banking Law, see § 133 and cross-references there given.

§ 330. Liability of safe deposit company for assessments by superintendent.

When the superintendent, pursuant to the powers conferred on him by article two of this chapter, shall have levied any assessment upon any safe deposit company and shall have duly notified such safe deposit company of the amount thereof, the amount so assessed shall become a liability of and shall be paid by such safe deposit company to the superintendent.

Source.—New. This section is identical with § 135 relating to banks. See the annotations to that section.

§ 331. Special remedies applicable to safe deposit companies.

Every safe deposit company shall be entitled to the following special remedies in enforcing the liability of depositors:

1. **Warehousemen's lien on property deposited.** Whenever any safe deposit company shall have received personal property upon deposit, as bailee, and shall have issued a receipt therefor, it shall be deemed a warehouseman as to such property, and all existing statutes and laws affecting warehousemen shall apply to such deposits, and the corporation shall have a lien on such deposits or the proceeds thereof to the same extent and with the same effect, and enforceable in the same manner, as now provided by law with reference to "warehousemen."

2. **Sale of contents of safe or box for non-payment of rental; procedure.** If the amount due for the rental of any safe or box in the vaults of any safe deposit company shall not have been paid for two years, it may, at the expiration thereof, send to the person in whose name such safe or box stands on its books a notice in writing in a securely closed postpaid registered letter, directed to such person at his post-office address, as recorded upon the books of the corporation, notifying such person that if the amount due for the rental of such safe or box is not paid within thirty days from date, the corporation will then cause such safe or box to be opened, and the contents thereof to be inventoried, sealed, and placed in one of the general safes or boxes of the corporation.

Upon the expiration of thirty days from the date of mailing such notice, and the failure of the person in whose name the safe or box stands on the books of the corporation to pay the amount

due for the rental thereof to the date of notice, the corporation may, in the presence of a notary public and of its president or secretary or treasurer, cause such safe or box to be opened, and the contents thereof, if any, to be removed, inventoried and sealed up by such notary public in a package, upon which the notary public shall distinctly mark the name of the person in whose name the safe or box stood on the books of the safe deposit company, and the date of removal of the property, and when such package has been so marked for identification by the notary public, it shall, in the presence of the president or secretary or treasurer of the corporation, be placed by the notary public in one of the general safes or boxes of the corporation, at a rental not to exceed the original rental of the safe which was opened, and shall remain in such general safe or box for a period of not less than two years, unless sooner removed by the owner thereof, and the notary public shall thereupon file with the corporation a certificate under seal, which shall fully set out the date of the opening of such safe or box, the name of the person in whose name it stood and a list of the contents, if any.

A copy of such certificate shall within ten days thereafter be mailed to the person in whose name the safe or box so opened stood on the books of the safe deposit company, at his last known post-office address, in a securely closed postpaid, registered letter, together with a notice that the contents will be kept, at the expense of such person, in a general safe or box in the vaults of the safe deposit company, for period of not less than two years. At any time after the mailing of such certificate and notice, and before the expiration of two years, such person may require the delivery of the contents of the safe as shown by said certificate, upon the payment of all rentals due at the time of opening of the safe or box, the cost of opening the box, the fees of the notary public for issuing his certificate thereon, and the payment of all further charges accrued during the period the contents remained in the general safe or box of the corporation.

After the expiration of two years from the time of mailing the certificate herein provided for, the safe deposit company shall mail in a securely closed postpaid registered letter, addressed to such person at his last known post-office address, a notice stating that two years have elapsed since the opening of the safe or box and

the mailing of the certificate thereof, and that the safe deposit company will sell all the property or articles of value set out in said certificate, at a time and place stated in such notice, not less than thirty days after the time of mailing such notice, and stating the amount which shall have then been due for rental up to the time of opening such safe, the cost of opening thereof, and the further cost of safekeeping all of its contents for the period since the opening of the safe or box. Unless such person shall pay on or before the day mentioned all said sums, and all the charges accruing to the time of payment, including advertising, the safe deposit company may sell all the property or articles of value set out in said certificate, at public auction, at the time and place stated in said notice, provided a notice of the time and place of sale has been published once within ten days prior to the sale, in a newspaper, published in the place where the sale is held.

From the proceeds of the sale, the safe deposit company shall deduct all its charges as stated in said notice, together with any further charges that shall have accrued since the mailing thereof, including reasonable expenses for notices, advertising, and sale. The balance, if any, of such proceeds shall be deposited by the safe deposit company, within thirty days after the receipt of the same, with the treasurer or chamberlain of the city, if any, or if none, with the county treasurer, of the county where the sale was held. The safe deposit company shall file with such deposit a certificate stating the name and last known place of residence of the owner of the property sold, the articles sold, the price obtained therefor, and showing that the notices herein required were duly mailed and that the sale was advertised as required herein. The officer with whom such balance is deposited shall credit the same to the owner of the property, and pay the same to such owner, his assignee, or legal representative, on demand and satisfactory evidence of identity. If such balance remains in the possession of such officer for a period of ten years, unclaimed by the person legally entitled thereto, it shall be transferred to the general funds of the city or county.

Whenever the contents of any such safe or box, so opened, shall consist either wholly or in part, of documents or letters or other papers of a private nature, such documents, letters or papers

shall not be sold, but shall be retained by the safe deposit company for a period of ten years from the time of the opening of the box, and, unless sooner claimed by the owner, may be thereafter destroyed in the presence of an officer of the corporation and a notary public not an officer or employee of the corporation.

The provisions of this section do not preclude any other remedy by action or otherwise now existing for the enforcement of the claims of a corporation against the person in whose name such safe or box stood, nor bar the right of a safe deposit company to recover so much of the debt due it as shall not be paid by the proceeds of the sale of the property deposited with it.

Source.—Subdivision 1 is from former § 305. Subdivision 2 is from former § 304. No material change has been made.

HOW EARLIER OPENING MAY BE SECURED.—A safe deposit company cannot modify subdivision 2 by a regulation printed on the receipts issued by it providing for an earlier opening of the safe in case of default in the payment of rent. But the parties to the renting contract have power to contract that the safe may be opened at an earlier date and under conditions other than those specified in this section. *Atty.-Gen. Rep. (1911) vol. 2, p. 153.*

ARTICLE IX.***Personal Loan Companies; Personal Loan Brokers.****Section 340. Incorporation; organization certificate.**

- 341. When corporate existence begins; conditions precedent to commencing business.
- 342. Bond to be filed with superintendent.
- 343. Rights of duly licensed personal loan associations and duly authorized personal loan companies and personal loan brokers preserved and continued.
- 344. General powers.
- 345. Restrictions on loans, interest and charges.
- 346. Restrictions on evidences of indebtedness.
- 347. Restrictions on assignments of wages.
- 348. Restrictions on place of transacting business.
- 349. Restrictions on branch offices.
- 350. Net earnings and dividends.
- 351. Revocation of authorization.
- 352. Change of location.
- 352. Annual meeting of stockholders.
- 354. Qualifications of directors.
- 355. Oath of directors.
- 356. Tenure of directors.
- 357. Monthly meetings of directors.
- 358. Communications from banking department.
- 359. Personal loan brokers; application.
- 360. Permanent capital.
- 361. Conditions precedent to engaging in business.
- 362. Powers, duties and liabilities of authorized broker.
- 362-a. Designation of superintendent of banks as attorney for service of process, when required.
- 363. Title to be taken in descriptive name.
- 364. Restrictions on profits of personal loan broker.
- 365. Reports to superintendent.
- 366. Liability for assessments by superintendent.
- 367. Books and records.
- 368. Prohibitions against encroachments on powers relating to interest.
- 369. Penalty for unlawfully engaging in personal loan business.
- 370. Offender a competent witness.
- 371. Penalty for publishing statements calculated to deceive.
- 372. Evidence of violation.
- 373. What constitutes a loan within the state.

* Re-enacted by Chap. 588 of the Laws of 1915. On April 16, 1914, the present Banking Law received the Governor's approval. Two days later the Governor also approved Chap. 518 of the Laws of 1914, which, in the opinion of the Attorney General (Atty-Gen. Rep., Dec. 29, 1914), superseded Art. 9 of the Banking Law, relating to personal loan companies and brokers. By Chap. 588 of 1915 the legislature has now repealed Chap. 518 of 1914 and restored Art. 9 of the Banking Law in amended form.

§ 340. Incorporation; organization certificate; amount of capital stock.

When authorized by the superintendent of banks as provided in section twenty-three of this chapter, three or more persons, all of whom shall be citizens of the United States, may form a corporation to be known as a personal loan company. Such persons shall subscribe and acknowledge and submit to the superintendent of banks at his office an organization certificate in duplicate which shall specifically state:

1. The name of the corporation which shall include the words "personal loan company."

2. The place where its business is to be transacted.

3. The amount of its capital stock, and the number of shares into which such capital stock shall be divided, which capital stock shall not be less than:

(a) Ten thousand dollars, if the place where its business is to be transacted is in a city of the first or second class;

(b) Five thousand dollars, if the place where its business is to be transacted is located elsewhere in the state.

4. The full name, residence and post-office address of each of the incorporators and the number of shares subscribed for by each.

5. The term of its existence, which may be perpetual.

6. The number of its directors which shall not be less than three, and the names and addresses of the incorporators who shall be its directors until its first annual meeting of stockholders.

Such certificate may provide for the manner in which the stock of the corporation may be transferred and for the number of directors necessary to constitute a quorum.

Source.—Former § 310, revised and with much new matter. The word "company" has been substituted in the title of this article for the word "association" which appeared in former article ten. The word "association" was considered less appropriate for stock corporations than the word "company."

Under former § 310 such corporations were restricted to counties which contained cities or parts of cities. This restriction is removed by the provisions of this section. Minimum number of incorporators has been changed from five to three. The form of the organization certificate has been conformed to that of other corporations organized under the Banking Law. The minimum amount of capital outside of cities of the first and second class has been reduced from ten thousand to five thousand dollars. The provision requiring all incorporators to be citizens of the United States is new and differs from the provisions of the Gen. Corp. Law, § 4, post.

CROSS-REFERENCES.—Definition of "personal loan company," see § 2.

Powers and duties of superintendent with respect to incorporation, see §§ 21-24.

Similar provisions as to other persons and corporations seeking to engage in business under the Banking Law, see § 100 and cross-references there given.

As to qualifications of incorporators, see Gen. Corp. Law, § 4, post; corporate names, id., § 6, post; amended and supplemental certificates, id., § 7, post; extension of corporate existence, id., § 37, post.

Transfer of stock, see Stock Corp. Law, § 50 et seq., post.

MUST HAVE SPECIFIED CAPITAL.—The superintendent cannot issue a license to any such company unless it has the required amount of capital, notwithstanding it may have been organized prior to the enactment of this statute with an authorized capital of less than that amount. Atty.-Gen. Rep. (1910) 848.

§ 341. When corporate existence begins; conditions precedent to commencing business.

When the superintendent shall have endorsed his approval on the organization certificate, as provided by section twenty-three of this chapter, the corporate existence of the personal loan company shall begin and it shall then have power to elect officers and to transact such other business as relates to its organization. But it shall transact no other business until:

1. All of its capital stock shall have been fully paid in cash and an affidavit stating that it has been so paid, subscribed and sworn to by its two principal officers, shall have been filed in the clerk's office of the county in which its place of business is located, and a certified copy thereof filed in the office of the superintendent;

2. The bond submitted by it to the superintendent of banks as required in section three hundred and forty-two of this article shall have been approved and filed by him;

3. The superintendent shall have duly issued to it the authorization certificate specified in section twenty-four of this chapter.

Source.—The provision as to when corporate existence shall begin is new. Subdivision 1 is derived from former §§ 13, 310. Subdivision 2 comes from former § 310. Subdivision 3 is new but is adapted from former § 32. The provisions of the last subdivision have been substituted for the license provisions of former §§ 310, 311.

CROSS-REFERENCES.—Similar provisions as to other persons and corporations engaging in business under the Banking Law, see § 103 and cross-references there given.

Forfeiture of corporate rights by not commencing business, see § 485.

§ 342. Bond to be filed with superintendent.

Every personal loan company shall submit to the superintendent of banks a bond, running to him officially, executed by it, as principal, and by a corporation authorized by the superintendent of insurance to transact the business of surety in this state, as surety, in an amount equal to one-tenth of the capital stock of such personal loan company and not less in any event than the sum of three thousand dollars, conditioned upon the faithful observance of law and the provisions of this chapter by such personal loan company. Such bond shall be subject to the approval of the superintendent of banks and shall continue in force until a bond in renewal thereof has been approved and accepted by the superintendent of banks as hereinafter provided. Such bond shall be renewed and refiled annually in January of each year. The failure of a personal loan company to submit a bond for the approval of the superintendent of banks as hereinbefore provided, or to obtain the approval and filing of such bond by the superintendent of banks prior to March first in any year shall be sufficient grounds for revocation of its authorization certificate by the superintendent of banks.

Source.—Former §§ 310, 311. The minimum amount of bond required has been reduced from five thousand to three thousand dollars. Former § 311 required bonds to be renewed annually; but in the present section the bond is to continue in force so long as business is transacted in this state.

Amended by L. 1915, ch. 588, which adds the last three sentences.

§ 343. Rights of duly licensed personal loan associations and duly authorized personal loan companies and personal loan brokers preserved and continued.

A personal loan association heretofore organized and subject to article ten of the banking law as amended by chapter one hundred twenty-seven of the laws of nineteen hundred and ten is continued and shall be deemed duly organized under this article, notwithstanding the repeal of said article ten or of the act under which such association was incorporated if, at the time this act takes effect, such association is lawfully engaged in business pursuant to a license duly issued by the superintendent of banks or an authorization certificate issued under the provisions of chapter five hundred and eighteen of the laws of nineteen hundred and fourteen.

Any such association is hereby authorized to continue in business under the provisions of this article until the expiration of such license or until such authorization certificate has been revoked by the superintendent of banks, in accordance with the provisions of section twenty-nine of this chapter. Prior to the expiration of such license, any such personal loan association may apply to the superintendent of banks for an authorization certificate under the provisions of this chapter and, if the superintendent of banks be satisfied from such examination and investigation as he may deem necessary, that such personal loan association has complied with the provisions of law applicable to it he may, within thirty days after the filing of such application, issue to it an authorization certificate as a personal loan company and thereupon such personal loan association shall become a duly authorized personal loan company subject to all the provisions of this article.

Any such personal loan association the title of which does not include the words "personal loan company" shall in all contracts to which it is a party and in advertisements published by it insert the descriptive words "a personal loan company" in parentheses after its legal title.

A personal loan company which has received an authorization certificate under the provisions of chapter five hundred eighteen of the laws of nineteen hundred and fourteen is hereby continued and shall be deemed duly organized under the provisions of this article, notwithstanding the repeal of such act.

Any personal loan company and any personal loan broker who has received an authorization certificate under the provisions of chapter five hundred and eighteen of the laws of nineteen hundred and fourteen is hereby authorized to continue in business under the provisions of this article until such authorization certificate has been revoked by the superintendent of banks, in accordance with the provisions of section twenty-nine of this chapter.

Source.—New. Substituted by L. 1915, ch. 588, for the original section, which was itself new.

§ 344. General powers.

In addition to the powers conferred by the general and stock corporation laws, every personal loan company shall, subject to the restrictions and limitations contained in this article, have the following powers:

1. To make loans, in its discretion, at the rate of interest of six per centum per annum.

2. To act as a pawnbroker without complying with any conditions other than those contained in this article.

3. To make small loans to needy borrowers upon any of the following securities:

(a) Mortgages upon personal property without the actual delivery of the property;

(b) Notes of the borrower endorsed or guaranteed by another person;

(c) Assignments or orders for the payment of salary or wages by the borrower or another person.

4. To charge interest upon loans made in accordance with subdivisions two and three of this section.

Source.—Former § 312. Subdivision 1 is new. Subdivision 2 has been substituted for the words “and shall be subject to and entitled to all the benefits and provisions of the laws of the state, and of all ordinances of the city in which it is located, concerning pawnbrokers; except that it shall not be required to obtain a license or file any bond other than that provided for in section three hundred and ten of this chapter” in former § 312. Subdivision 3, b and c have been substituted for the words “together with other lawful securities” contained in former § 312.

CROSS-REFERENCES.—For restrictions on powers as pawnbrokers, see § 345, subds. 1, 2, 3, and 6.

For restrictions on powers under subd. 3, see § 345, subds. 1, 2, 4, 5, and 6; for restrictions on assignments, see § 347.

For restrictions on powers under subd. 4, see § 345, subds. 2, 3, and 4.

For restrictions on place of business, see § 348; on branch offices, see § 349.

Powers of other corporations organized under Banking Law, see § 106 and cross-references there given.

Prohibitions against encroachments on powers, see §§ 368, 369.

General powers of corporations, see Gen. Corp. Law, §§ 10, 11; as to acquisition of real property, *id.*, §§ 13, 14.

As to pawnbrokers, see Gen. Bus. Law, §§ 40-52.

§ 345. Restrictions on amount of loan, interest and charges.

Every personal loan company shall be subject to the following restrictions upon the making of loans and on charges for services in connection therewith:

1. No loan made under subdivisions two and three of section

three hundred and forty-four of this article shall exceed two hundred dollars, nor shall any person owe any such corporation on account of such loan more than two hundred dollars for principal at any one time.

2. Interest shall not be charged or collected in advance and shall be computed on unpaid balances.

3. Interest on loans made as a pawnbroker shall not exceed three per centum per month and no other charge of any kind shall be made by such corporation when acting as pawnbroker.

4. Interest on loans made as provided in subdivision three of section three hundred and forty-four of this article shall not be charged at a rate to exceed two per centum per month.

5. For a loan exceeding fifty dollars a charge of not more than two dollars may be made for expenses, including any examination of the property mortgaged or investigation of the character and circumstances of the borrower, indorser, or surety, and the drawing, taking the acknowledgment, and filing of necessary papers. If the loan is fifty dollars or less, such charge shall not be more than one dollar. No such charge shall be made on any loan or renewal thereof oftener than once in each period of twelve months. No such charge shall be imposed upon any one borrower for any new or additional loan made within three months after any such charge has been imposed, nor shall any charge be imposed upon any one borrower for a loan which is to be repaid within less than one calendar month after the loan is made, nor shall any charge of any kind be made in addition to interest on a loan of less than ten dollars. No charge whatsoever shall be made unless or until a loan shall have been made as the result of such examination or investigation.

6. No charge other than costs specifically prescribed by law to be included in any judgment shall be made against any borrower by reason of the institution of any action or proceeding to appropriate security to the payment of any loan, or of any action to recover of the borrower any sum lent.

Amended by L. 1915, ch. 588.

Source.—Former § 312. The words “and shall be computed on unpaid balances” in subdivision 2 are new. In subdivision 3 the words “and no other charge of any kind shall be made by such corporation when acting as pawnbroker” are new. The provision in subdivision 5 regarding no further

charges upon additional loans if made within three months of a previous loan, is new and the original subdivision has been amended by L. 1915, ch. 588. The former section forbade further charges on renewals or transfers within twelve months. Subdivision 6 is new.

CROSS-REFERENCES.—For powers herein restricted, see § 344.

MORTGAGE INVALIDATED BY EXCESSIVE CHARGE.—Under this section, taken in connection with § 368, a chattel mortgage given to secure a loan of \$65 is rendered void by the exaction of the sum of \$10, in addition to the authorized interest, to pay for the services of the lender's attorneys in searching the title to the mortgaged property and in drawing the mortgage. *London Realty Co. v. Riordan*, 207 N. Y. 264, aff'g 148 App. Div. 854.

§ 346. Restrictions on methods of making and paying loans.

Every personal loan company shall:

1. Deliver to the borrower, at the time a loan is made, a statement in the English language showing in clear and distinct terms the amount of the loan, the date of the loan and of its maturity, the security for the loan, the person to whom the loan is made, the name of the lender and the amount and rate of interest charged. Upon such statement there shall be printed in English a copy of this section and of section three hundred and forty-five of this article.

2. Give to the borrower a plain and complete receipt for all payments made on account of any such loan at the time such payments are made.

3. Upon repayment of the loan in full, mark indelibly in the presence of the borrower every paper signed by him with the word "paid" or "canceled", and discharge any mortgages, restore any pledges, return any notes and cancel any assignments given by the borrower as security.

No personal loan company shall take any confession of judgment, any power of attorney, nor shall it take any instrument that does not state the actual amount of the loan in question, the time for which it is made and the rate of interest, nor any instrument in which blanks are left to be filled after execution.

Amended by L. 1915, ch. 588.

Source.—General Bus. Law, § 59c, as added by ch. 579, Laws of 1913.

§ 347. Restrictions on assignments of wages or salary.

Under any assignment or order for the payment of future salary or wages given as security for a loan made under this ar-

ticle a sum not exceeding ten per centum of the borrower's salary or wages shall be collectible therefrom under such an assignment or order at the time of each payment of salary or wages, if the amount of the loan has not been paid. Such assignment or order shall not be subject to the provisions of section forty-two of the personal property law.

Such an assignment or order, when made by a married man or woman, not legally separated from his or her spouse, shall not be valid unless accompanied by the written assent of his or her spouse.

Source.—General Bus. Law, § 59c, as added by ch. 579, Laws of 1913.

Amended by L. 1915, ch. 588.

Under the exception of the assignment from the provisions of the personal property law, the filing of such assignment within three days after its execution with the employer is not necessary to make the assignment valid.

§ 348. Restrictions on place of transacting business.

No personal loan company shall:

1. Transact or solicit business under any other name or at any other office or place than that designated in the authorization certificate issued to such company, except as provided in section three hundred and forty-nine of this article, and such authorization certificate shall be kept posted at all times in a prominent place in such office.

2. Maintain an office or place of business in the same room in which any other business is transacted or in a room connecting with or opening into a room in which any other business is transacted, without the written consent of the superintendent of banks which shall be at all times kept posted with such authorization certificate.

Source.—New. Amended by L. 1915, ch. 588.

CROSS-REFERENCE.—For provisions similar to those contained in subd. 1, see §§ 110, 195, 245.

For provisions similar to those contained in subd. 2, see § 171, relating to private bankers; see § 245, relating to savings banks.

§ 349. Branch offices and restrictions thereon; penalty for violating.

Any personal loan company located and doing business in a city of the first or second class may open and occupy one or more

branch offices, provided that before any such branch or branches shall be opened or occupied:

1. The superintendent, in his discretion, shall have given his written approval for such branch or branches, as provided in section fifty-one of this chapter;

2. Every such corporation desiring to open and occupy a branch office shall have a capital of ten thousand dollars for every branch office established, in addition to the capital required by section three hundred and forty of this article. Every personal loan company which maintains a branch office shall keep posted at all times in a prominent place in such branch office a copy of its authorization certificate, certified by the superintendent of banks, together with the written approval of the superintendent of the maintenance of such branch.

Any personal loan company violating the provisions of this section shall forfeit to the people of the state the sum of one thousand dollars for every week during which any branch office shall hereafter be open or occupied in violation of this section.

Source.—New. Amended by L. 1915, ch. 588, which added the last sentence of subdivision 2.

CROSS-REFERENCES.—Powers and duties of superintendent with respect to branch officers, see § 51.

As to branch offices of other corporations organized under the Banking Law, see § 110 and cross-references there given.

§ 350. Net earnings and dividends.

Every personal loan company may pay dividends on its capital stock, provided that no dividend shall be declared or paid except under the following conditions and limitations:

1. In determining net earnings no more than a reasonable deduction shall be made for expenses including salaries.

2. The total dividends declared in any one year shall not amount to more than twelve per centum on the capital stock.

Whenever the net earnings as determined in this section amount to more than twelve per centum on its capital, such personal loan company shall comply with any order of the superintendent of banks reducing the rates of interest or charges which may be made by such personal loan company.

Source.—Former § 313. Under the former law dividends were limited to ten per centum.

CROSS-REFERENCES.— Definition of "net earnings," see § 3.

Superintendent's power to order reduction of charges, see § 56, subd. 5.

Similar provision as to profits of personal loan brokers, see § 364.

§ 351. Effect of revocation by superintendent of authorization certificate.

Whenever the superintendent shall have revoked his authorization of any such personal loan company and shall have taken the action to make such revocation effective specified in section twenty-nine of this chapter, all the rights and privileges of such company, resulting from such preceding authorization, shall forthwith cease and determine.

Source.—New.

CROSS-REFERENCES.— Revocation by superintendent, see § 29.

Similar provision as to foreign banks, see § 146; as to foreign investment companies, see § 308.

§ 352. Change of location.

Any personal loan company may make a written application to the superintendent of banks for leave to change its principal place of business to another place in the same village, borough or city, if in a city not divided into boroughs. The application shall state the reasons for such proposed change and shall be signed and acknowledged by a majority of the board of directors and be accompanied by the written assent thereto of stockholders owning at least two-thirds in amount of its stock. If the superintendent shall grant his certificate authorizing the change of location, as provided in section fifty of this chapter, the personal loan company may, upon or after the day specified in the certificate, remove its property and effects to the location designated therein, and thereafter its principal place of business shall be the location so specified; and it shall have all the rights and powers in such new location which it possessed in its former location.

Source.— Former § 31.

CROSS-REFERENCES.— Similar provisions as to other corporations subject to the Banking Law, see § 119 and cross-references there given.

§ 353. Annual meeting of stockholders; notice.

The stockholders of every personal loan company shall hold an annual meeting for the election of directors on the second Tuesday

in January or within ten days thereafter, unless the by-laws shall fix some other date which must, in any event, be during the months of January or February. Notice of such meeting shall be given as required by the stock corporation law.

Source.—New. Amended by L. 1915, ch. 588. The section is similar to § 122 relating to banks. See the annotations to that section.

§ 354. Qualifications of directors.

A director of a personal loan company need not be a stockholder of such company unless its by-laws so provide.

Source.—New.

CROSS-REFERENCES.—For similar provisions as to other corporations subject to the Banking Law, see § 123 and cross-references there given.

§ 355. Oath of directors.

Each director, when appointed or elected, shall take an oath that he will, so far as the duty devolves on him, diligently and honestly administer the affairs of the corporation, and will not knowingly violate, or willingly permit to be violated, any of the provisions of law applicable to such corporation. Such oath shall be subscribed by the director making it, and certified by an officer authorized by law to administer oaths and immediately transmitted to the superintendent of banks.

Source.—New. Is adapted from § 124 relating to banks. See the annotations to that section.

§ 356. Tenure of office of directors.

The directors shall, unless sooner removed or disqualified, hold office until the next annual meeting of stockholders, and until their successors are elected and have qualified.

Source.—New. Is identical with § 125 relating to banks. See the annotations to that section.

§ 357. Meetings of directors; quorum; statement to directors.

The directors of every personal loan company shall hold regular meetings as provided in the by-laws. One of their number, to be chosen by the board, shall be the president of the board. If the number of directors necessary to constitute a quorum is not prescribed in the certificate of incorporation or organi-

zation certificate, or in the by-laws, and no provision is made therein for determining the same, the directors may fix such number, which shall not be less than two, with the same effect as if such number were prescribed in the certificate of incorporation or organization certificate. The treasurer or manager shall prepare and submit to the directors at each regular meeting of the board, or to an executive committee of not less than three members of such board at least four times a year a written statement showing the total amount and number of loans made, the classes of securities taken therefor, the interest charged, the average amount of loans made, and any expenses incurred since the last regular meeting of the board.

A copy of such statement, together with a list of the directors present at such meeting, verified by the affidavit of the officer or officers charged with the duty of preparing and submitting such statement shall be filed with the records of the corporation within one day after such meeting, and shall be presumptive evidence of the matters therein stated.

Amended by L. 1915, ch. 588.

Source.—Former § 42, except the provision as to quorum which is adapted from former § 69 relating to banks.

CROSS-REFERENCES.—For similar provisions as to other corporations subject to the Banking Law, see § 129 and cross-references there given.

§ 358. Communications from banking department must be submitted to directors and noted in minutes.

Each official communication directed by the superintendent of banks or one of his deputies to a personal loan company or to any officer thereof, relating to an investigation or examination conducted by the banking department or containing suggestions or recommendations as to the conduct of the business of the corporation, shall be submitted, by the officer receiving it, to the board of directors at the next meeting of such board, and duly noted in the minutes of the meetings of such board.

Source.—Former § 41. Is identical with § 132 relating to banks. See the annotations to that section.

§ 359. Personal loan brokers; application certificate.

Any individual, partnership or unincorporated association desiring to engage in business as personal loan brokers shall sub-

scribe and acknowledge and submit to the superintendent of banks at his office a certificate in duplicate which shall specifically state:

1. The full name, residence and post-office address of such individual or of each member of such partnership or unincorporated association.

2. That the subscriber or subscribers are applicants for an authorization certificate to transact the business of a personal loan broker.

3. The state or county of which each individual named in the certificate is a citizen.

4. The amount of permanent capital which such individual, partnership or unincorporated association has deposited in cash to be invested and kept permanently invested in such business, which, if said business is to be transacted in a city of the first or second class shall be not less than ten thousand dollars and, if such business is to be transacted elsewhere in the state, shall be not less than five thousand dollars.

5. The particular city or incorporated or unincorporated village in which such business is to be transacted and the location by street and number of the office or place of business therein.

Source.—New.

Under article 5-a of the General Business Law, as added by Laws of 1913, chapter 579, individuals exercising powers conferred on personal loan companies were to be subject to regulation and supervision by an officer designated as the "supervisor of small loans," to be appointed by the Governor. The law, however, was considered so unsatisfactory that this office was never filled; and personal loan brokers have been brought under the supervision of the banking department by the present law, and Laws of 1913, ch. 579, has been repealed by this act.

CROSS-REFERENCES.—Fourth deputy superintendent to have charge of supervision of, see § 13.

§ 360. Permanent capital; increase or decrease thereof.

The permanent capital of every such personal loan broker shall be paid in cash and shall be kept unimpaired in his personal loan business as specified in the verified certificate submitted to the superintendent in accordance with the provisions of section three hundred fifty-nine of this article. From time to time, with the written approval of the superintendent and upon good cause shown, such permanent capital may be increased or decreased,

provided it shall not be decreased below the amount specified in said section.

Source.—New. Substantially identical with § 154 relating to private bankers.

§ 361. Conditions precedent to personal loan broker engaging in business.

No personal loan broker shall exercise any of the powers conferred by this article upon personal loan companies until he has

1. Deposited in cash the amount of permanent capital specified in his verified certificate, as required by section three hundred and sixty of this article; and

2. Complied with the requirements specified in subdivisions two and three of section three hundred and forty-one of this article.

Source.—New.

CROSS-REFERENCES.—For similar provisions as to other persons and corporations seeking to engage in business under the Banking Law, see § 103 and cross-references there given.

§ 362. Powers, duties and liabilities of authorized broker.

Every personal loan broker who shall have been duly authorized by the superintendent of banks shall be entitled to exercise the powers conferred upon personal loan companies by this article and shall be subject to all the duties, restrictions, liabilities and penalties imposed upon such companies by this article, except that no personal loan broker shall transact his business at any place other than that specified in his authorization certificate.

Source.—New. This section has been substituted for the license provisions contained in General Business Law, art. 5-a (as added by Laws of 1913, ch. 579) and repealed by this act.

§ 362-a. Designation of superintendent of banks as attorney for service of process when required.

An individual who is not a resident of this state shall not, either by himself or as a member of a partnership or unincorporated association, be authorized by the superintendent of banks to transact business under the provisions of this article, unless such individual shall have designated the superintendent of banks, by a duly executed instrument in writing, his true and lawful attorney upon

whom all process in any action or proceeding by any resident of this state against such individual or the partnership or unincorporated association of which he is a member may be served with the same effect as if such individual were a resident of this state and had been lawfully served with such process within the state.

Source.—Added by L. 1915, ch. 588.

§ 363. Title to be taken in descriptive name.

All mortgages, notes, assignments, agreements and contracts taken by any such personal loan broker in connection with such personal loan business, shall be taken in the name of such broker with the addition of the descriptive name "personal loan broker."

Source.—New. Conformed to § 155 relating to private bankers.

§ 364. Restriction on profits of personal loan broker.

No personal loan broker shall in any year withdraw or take out of his business profits amounting to more than twelve per centum of his permanent capital after allowing for a reasonable deduction for expenses and salaries, including the personal services of such broker. Whenever his profits during the preceding calendar year, less such deduction, shall have exceeded that amount, such broker shall comply with any order of the superintendent of banks reducing the rates of interest or charges which may be made by such broker.

Source.—New.

CROSS-REFERENCES.—Superintendent's power to order reduction of charges, see § 56, subd. 5.

Similar provision as to net earnings of personal loan companies, see § 350.

§ 365. Reports to superintendent; penalty for failure to make.

On or before the first day of February in each year, every personal loan company and every personal loan broker shall make a written report to the superintendent of banks which shall contain a statement of condition on the morning of the first day of January in such year and shall be in the form and contain the matters prescribed by the superintendent.

Every such report shall be verified by the oaths of the president or vice-president and secretary or treasurer of such company

or by such personal loan broker. The verification shall state that the report is true and correct in all respects to the best of the knowledge and belief of the person or persons verifying it, and that the usual business of the corporation or broker has been transacted at the location required by this article and not elsewhere.

Every such corporation and broker shall also make any other special reports to the superintendent which he may from time to time require, which shall be in such form and filed at such date as may be prescribed by the superintendent and shall, if required by him, be verified in such manner as he may prescribe.

Every such corporation, within ten days after declaring a dividend, shall make written report to the superintendent stating the amount of such dividend, and the amount of its net earnings in excess thereof. Such report shall be verified by the oath of the president, or treasurer of the corporation.

If any such corporation or broker shall fail to make any report required by this section on or before the day designated for the making thereof, or shall fail to include therein any matter required by the superintendent, it shall forfeit to the people of the state the sum of one hundred dollars for every day that such report shall be delayed or withheld, and for every day that it shall fail to report any such omitted matter, unless the time therefor shall have been extended by the superintendent as provided by section forty-nine of this chapter.

Source.—Former §§ 21, 311.

CROSS-REFERENCES.—Powers and duties of superintendent with regard to reports, see §§ 42, 43.

Reports of other persons and corporations subject to the Banking Law, see § 133 and cross-references there given.

§ 366. Liability of company or broker for assessments by superintendent.

When the superintendent, pursuant to the powers conferred on him by article two of this chapter, shall have levied any assessment upon any personal loan company or personal loan broker and shall have duly notified such company or broker of the amount thereof, the amount so assessed shall become a liability of and shall be paid by such company or broker to the superintendent.

Source.—New. Is identical with § 135 relating to banks. See the annotations to that section.

§ 367. Books and records.

Every personal loan company and personal loan broker shall conform its methods of keeping its books and records to such orders in respect thereto as shall have been made and promulgated by the superintendent pursuant to section forty-nine of this chapter. Any such company or broker that refuses or neglects to obey any such order shall be subject to a penalty of one hundred dollars for each day that such refusal or neglect continues.

Every such company and broker shall preserve the records of final entry used in such business, including cards used in the card system, for a period of at least six years from the date of making the same or from the date of the last entry thereon, unless the superintendent shall, upon application of such company or broker, have otherwise directed.

Source.—The first paragraph is from former § 8. The second paragraph is new. The reference in the first paragraph to § 49 should be to § 56.

CROSS-REFERENCES.—Orders by superintendent with regard to methods of keeping books, see § 56, subd. 4.

Similar provisions as to other persons and corporations subject to the Banking Law, see §§ 109, 136, and cross-references there given.

§ 368. Prohibitions against encroachment on powers relating to interest; violations of such prohibitions or restrictions; penalty therefor.

No person or corporation, except as authorized by this chapter, shall directly or indirectly charge or receive any interest, discount or consideration greater than six per centum per annum upon the loan, use or forbearance of money, goods or things in action of the value of two hundred dollars or less, or upon the loan, use or sale of personal credit in any wise.

The foregoing prohibitions shall apply to any person who, as security for any such loan, use or forbearance of money, or for any such loan, use or sale of personal credit, makes a pretended purchase of property from any person and permits the owner or pledgor to retain the possession thereof, or who, by any device or pretense of charging for his services or otherwise, seeks to obtain a larger compensation than is authorized by this article.

Any person, and the several officers and employees of any corporation, who shall violate the foregoing prohibitions, shall be

guilty of a misdemeanor, and upon proof of such fact the debt shall be discharged and the security shall be void. But this section shall not apply to licensed pawnbrokers, making loans upon the actual and permanent deposit of personal property as security; nor shall this section affect in any way the validity or legality of any loan of money or credit exceeding two hundred dollars in amount.

Any personal loan broker and any officer or employee of a personal loan company who shall violate any of the provisions of section three hundred and forty-five of this chapter shall be guilty of a misdemeanor and upon proof of such fact the debt shall be discharged and the security shall be void.

Amended by L. 1915, ch. 588, which added the last paragraph.

Source.—Former § 314.

CROSS-REFERENCES.—Interest that may be taken by banks and bankers, see §§ 114, 115; by trust companies, see §§ 200, 201.

Rate of interest that may be charged by licensed pawnbrokers, see Gen. Bus. Law, § 46.

General Usury Law, see Gen. Bus. Law, §§ 370-382.

Penalty for taking usury, see Penal Law, § 2400, post.

NOT REPEALED BY PENAL LAW, SECTION 2400.—Section 2400 of the Penal Law, which makes the taking of security an essential element of the crime of usury as therein defined, did not repeal former § 314 by implication. The two statutes are not inconsistent, but are complementary to each other. *People v. Schultz*, 149 App. Div. 844.

FORBIDS EXACTION OF ANY OTHER CHARGES.—This action taken in connection with § 345 (former § 312), forbids the exaction by the lender, either in his own favor or in favor of anybody else, of any other charge than the authorized rate of interest and an additional sum not exceeding \$1 if the loan is for \$50 or less, or a sum not exceeding \$2 if the loan is in excess of \$50. *London Realty Co. v. Riordan*, 207 N. Y. 264, aff'g 148 App. Div. 854.

Section 314 of the former Banking Law of 1909, relating to the charge or receipt of interest in excess of the real rate, does not apply to private bankers. *Clarke v. Taylor*, 167 App. Div. 376.

TAKING SECURITY AS AN ELEMENT OF OFFENSE.—Under this section the taking of security is not an element of the crime where the loan is of money, but it is where the loan is of personal credit. *People v. Schultz*, 149 App. Div. 844.

RESTITUTION NOT A DEFENSE.—The provisions of Gen. Bus. Law, §§ 376, 382 to the effect that restitution of moneys or property illegally received shall be a bar to further penalties, are not available to a person prosecuted for violation of this section. *People v. Young*, 207 N. Y. 522, aff'g 153 App. Div. 567.

LOAN ASSOCIATION NOT A "PRIVATE BANKER."—An unincorporated association whose sole business is that of loaning money upon assignments

of wages and chattel mortgages is in no sense a "private banker" so as to be entitled to the protection of § 114 when prosecuted for a violation of this section. *People v. Young*, 207 N. Y. 522, aff'g 153 App. Div. 567.

LIABILITY AS PRINCIPAL.—One who violates this section is liable as a principal, although he makes the loan in behalf of another. *People v. Schultz*, 149 App. Div. 844.

BURDEN OF PROOF.—In a prosecution under this statute the People need now show that the defendant is not a person or corporation duly authorized by the Superintendent of Banks. The burden is on the defendant to bring himself within the exception. *People v. Schultz*, 149 App. Div. 844.

FOR AN INDICTMENT HELD SUFFICIENT under this section, see *People v. Young*, 207 N. Y. 522, aff'g 153 App. Div. 567.

§ 369. Penalty for unlawfully engaging in personal loan business.

No person or corporation shall, except as authorized by this chapter, make any loan of two hundred dollars or less, or become endorser upon or guarantor of or surety for any such loan for which loan, endorsement or guarantee any charge, interest, discount or consideration is made or taken in excess of six per centum per annum. No individual, partnership, unincorporated association or corporation shall, directly or indirectly, engage or offer to engage in negotiating or arranging any transaction herein prohibited, or aiding the borrower or the lender either to procure or to make any such loans. A violation of any of the provisions of this section shall be a misdemeanor, whether or not such loans are actually made.

Any person or corporation purchasing or discounting such notes or loans of two hundred dollars or less, or endorsing, guaranteeing or becoming surety for the payment of any such notes or loans for compensation or for value of any kind, or furnishing security therefor or procuring any endorser, guarantor or surety therefor, for compensation or value of any kind, without having been first authorized so to do under the provisions of this chapter, shall be presumed to have violated the provisions of this section.

Amended by L. 1915, ch. 588.

Source.—New, but based on former § 314. See notes to § 368.

§ 370. Offender a competent witness.

Any person offending against any provision of this article is a competent witness against any other person so offending, and may

be compelled to attend and testify upon any trial, hearing or proceeding, or investigation, in the same manner as any other person. But the testimony so given shall not be used in any prosecution or proceeding, civil or criminal, against the person so testifying. A person so testifying to the violation of any of the provisions of this article, shall not thereafter be liable to indictment, prosecution, or punishment for such violation, and may plead or prove the giving of testimony accordingly, in bar of such an indictment or prosecution.

Source.—New. Adapted from Penal Law, § 381.

§ 371. Penalty for publishing statements calculated to deceive.

No personal loan company or personal loan broker or other person or corporation shall print, publish or distribute or cause to be printed, published or distributed in any manner whatsoever, any written or printed statement with regard to the rates, terms or conditions for the lending of money, credits, goods or things in action, in amounts of two hundred dollars or less, which is false or calculated to deceive. Any person, partnership or corporation violating the provisions of this section shall be guilty of a misdemeanor.

Source.—New. Amended by L. 1915, ch. 588.

§ 372. Evidence of violation.

Evidence of a violation of any provision of this article by an officer, agent or employee shall be prima facie evidence of such violation by his principal. Evidence of a violation of any provision of this article by a member of a partnership shall be prima facie evidence of such violation by each member of the partnership. Evidence of a violation of any provision of this article by a director, trustee, officer, agent or employee of a corporation shall be prima facie evidence of such violation by such corporation.

Source.—Added by L. 1915, ch. 588.

§ 373. What constitutes a loan within the state.

When an application for a loan, or for an endorsement or guarantee, or for the purchase or sale of a note, or when a power of attorney to make a loan, is made or signed by any person, association, partnership or corporation within this state and the money

is advanced, or the endorsement or guarantee is made or furnished, or the note purchased by any person, association, partnership or corporation without this state, the transaction shall be deemed to be a loan made within this state, and such loan and the parties making it, or taking such application or power of attorney, shall be subject to the provisions of this article. This section shall not affect in any way the validity or legality of any loan of money or credit exceeding two hundred dollars in amount.

Source.—Added by L. 1915, ch. 588.

ARTICLE X.**Savings and Loan Associations; Land Bank of the State of New York.**

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§ 375. Incorporation; organization certificate.

When authorized by the superintendent of banks as provided in section twenty-three of this chapter, fifteen or more persons, residents of the state of New York, may form a corporation to be known as a savings and loan association. Such persons shall subscribe and acknowledge and submit to the superintendent of banks at his office an organization certificate in duplicate, which shall specifically state:

1. The name by which the association is to be known, which shall contain as a part thereof the words "savings and loan association."
2. The place where its business is to be transacted.
3. The name, occupation, place of residence and post-office address, including street and number, if in a city, of each incorporator and the number of shares for which he has subscribed.
4. The matured value of the total number of shares for which the

incorporators have subscribed, which shall be at least twenty-five thousand dollars.

5. The number of the directors of the association, which shall not be less than seven or more than fifteen, and the names of the incorporators who shall be its directors until the first annual meeting. The incorporators named as directors must possess the qualification of directors specified in section four hundred five of this article.

Source.—Former § 210.

CROSS-REFERENCES.—Definition of "savings and loan association," see § 2.

Powers and duties of superintendent with respect to incorporation, see §§ 21-24.

Similar provisions as to other corporations seeking to engage in business under the Banking Law, see § 100 and cross-references there given.

As to general qualifications of incorporators, see Gen. Corp. Law, § 4, post; corporate names, id., §§ 6, 60, post; amended and supplemental certificates, id., § 7, post; extension of corporate existence, id., § 37, post.

CHANGE OF NAME.—Upon a change of name by a building and loan association, the new name must contain the words "savings and loan association." Atty.-Gen. Rep. (1902) 186.

RIGHT TO USE "BANK" IN NAME.—Under the former law the Attorney-General was of the opinion that a building and loan association should not be allowed to use the word "bank" in its title. Atty.-Gen. Rep. (1892) 398.

AMENDED CERTIFICATE OF INCORPORATION.—Where a building and loan association made application to change its name, the Attorney-General rendered an opinion that the amended certificate of incorporation need not be limited to the matters stated in this article, but might contain any provision for the regulation of its business and the conduct of the corporate affairs, and any limitation upon its powers or the powers of its directors and stockholders, which did not exempt them from the performance of any duty imposed by law. Atty.-Gen. Rep. (1902) 186.

POWER OF DIRECTORS.—The articles of association constitute the contract between the association and its members, and no provision of such contract can be abrogated or its obligation impaired by any act of the directors which is not expressly authorized by the articles themselves. *Wolfe v. Conkey Avenue Sav., etc., Assoc.*, 75 Hun 201.

§ 376. Proposed by-laws.

The incorporators shall subscribe and acknowledge and submit to the superintendent of banks at his office proposed by-laws in duplicate, which shall prescribe the manner in which the business

of the association shall be conducted with reference to the following matters:

1. The dates of regular meetings of shareholders; the notice, if any, to be given; the qualifications of voters and the manner of voting; the manner of calling special meetings, and the number of members which shall constitute a quorum. The date of the annual meeting shall be in January.

2. The number and the qualifications of directors, other than that specified in section four hundred five of this article; their terms of office, which shall not be less than one year or more than three years, and if the terms of office be more than one year, the method of division into classes for the purpose of electing, as nearly as may be, an equal number of directors each year; the removal or suspension of directors and the filling of vacancies.

3. The meetings of the board of directors; its powers and duties; the appointment or election of auditors and their compensation; the appointment of appraisers and their compensation.

4. The officers; the manner of their election; their terms of office, duties and compensation; the officers who shall be ex officio members of the board of directors; and the bonds which shall be given by officers who have the custody or possession of money, securities or property of the association.

5. The classes of shares which may be issued; whether they shall be issued in series or otherwise; the times when they may be issued; and their matured value.

6. The certificates or pass-books which shall be issued to members.

7. The fees that may be charged, which shall be only an entrance fee not exceeding twenty-five cents a share or in lieu thereof a membership fee not exceeding one dollar; a transfer fee not exceeding twenty-five cents a share, or in lieu thereof a total fee not exceeding one dollar on each transfer.

8. The sums of money, or dues, that shall be paid upon shares and the time of their payment; the time and manner of apportioning, crediting and paying dividends.

9. Loans and investments; the security to be taken for loans, the premium plan, if any, and the conditions under which loans may be repaid.

10. The fines which may be imposed upon members for failure punctually to pay dues, interest or premium.

11. The interest, not to exceed six per centum per annum, that may be paid upon advance payments of dues, interest or premium.

12. The conditions upon which shares may be transferred, matured, withdrawn, retired or suspended and forfeited.

13. Membership in the land bank of the state of New York; the election of a representative to vote at meetings of the land bank, and the nomination of a director of the land bank.

14. The manner and conditions under which the by-laws may be altered or amended.

Source.—Former § 211. In subdivision 2 the provision as to “the removal or suspension of directors and the filling of vacancies” is new. In subdivision 6 the provision regarding “pass-books” is new. Subdivisions 12 and 13 are new.

CROSS-REFERENCES.—Amendment of by-laws, see § 410.

Restrictions on premium plan, see § 385; on real estate mortgages, see § 386; on taking, holding and conveying real estate, see § 387; on power to borrow, see § 388; on fines, see § 389; on payment of expenses, see § 390; as to entries in books, see § 391; on payment of matured shares and withdrawals, see § 398.

THE BY-LAWS FORM PART OF THE CONTRACT between the members and the corporation. *O'Malley v. Peoples' B. L. & S. Assoc.*, 92 Hun 572.

RIGHT TO VOTE.—It seems that the by-laws cannot limit the right of voting to a particular class of members. *Atty.-Gen. Rep.* (1894) 109.

REDEMPTION FEE PROHIBITED.—Under subdivision 7 a by-law may not contain a provision for “a charge of not less than two nor more than five per cent. upon the amount loaned” where a loan to a member is repaid before maturity. Such a charge must be regarded in the nature of a redemption fee. *Matter of Tuckahoe Home Bldg. & L. Assoc.*, 81 Misc. 33.

FINE FOR DELAY IN PAYMENT.—A building and loan association has no right to provide in its by-laws for a fine of five per cent. for delay in payment of premiums and dues. *Atty.-Gen. Rep.* (1911) vol. 2, page 118.

§ 377. When corporate existence begins.

When the superintendent of banks shall have approved the organization certificate and the proposed by-laws, and shall have issued his authorization certificate as provided in section twenty-four of this chapter, the corporate existence of the association shall begin.

Source.—New.

CROSS-REFERENCES.—Similar provisions as to other corporations organized under the Banking Law, see § 103 and cross-references there given.

Forfeiture of corporate rights by not commencing business, see § 485.

§ 378. General powers.

In addition to the powers conferred by the general corporation law, every savings and loan association shall, subject to the restrictions and limitations contained in this article and its by-laws, have the following powers:

1. To issue the shares described in section three hundred eighty-three of this article to persons qualified for membership, and deliver to them certificates or pass-books representing such shares; to receive from its members the sums of money, or dues, payable on such shares; to invest the moneys so received in the property and securities prescribed in section three hundred eighty-four of this article; to borrow money as provided in section three hundred eighty-eight of this article; to declare and credit dividends in the manner prescribed in this article; and to exercise by its board of directors or duly authorized officers, agents or representatives, subject to law, all such incidental powers as shall be necessary to carry on the business of a savings and loan association, in accordance with the intent and purpose of this article.

2. To charge an entrance or membership fee upon shares issued by it, and to permit the transfer of shares upon the payment of a transfer fee and upon compliance with its by-laws.

3. To charge premium or interest in excess of the legal rate, upon loans to members; to fine members who fail to pay punctually the sums of money, or dues, required upon their shares, or the interest or premium upon the loans obtained by them; to impress a lien upon the shares of any member to the extent of any lawful fines or other obligations due to it.

4. To mature shares and pay to the holders thereof the matured value of such shares; to permit members to withdraw their shares and pay to such members the withdrawal value thereof; to retire shares and pay to the holders of the shares so retired the full value thereof; and to suspend and forfeit shares held by delinquent members.

5. To assign to the land bank of the state of New York bonds and mortgages and other securities owned by the association as security for the payment of debenture bonds issued for its account; to guarantee the payment of such debenture bonds; to exercise such other powers as may be conferred upon member associations of such land bank; and to perform such duties and

obligations as may be lawfully required of such member associations.

6. To do all other acts authorized by this article.

Source.—The powers here enumerated were scattered through various sections of the former article which contained no section generally defining powers. The present section confers no new powers except those contained in subdivision 5.

CROSS-REFERENCES.—Restrictions on premium plan, see § 385; on real estate mortgages, see § 386; on taking, holding and conveying real estate, see § 387; on power to borrow, see § 388; on fines, see § 389; on payment of expenses, see § 390; on entries in books, see § 391; on payment of matured shares and withdrawals, see § 398.

Limitation on amount of shares of the land bank which may be held by a savings and loan association, see § 424.

Power of member association to pledge mortgages as security for land bank bonds, see § 426.

Liability of member association for engagements of land bank, see § 428.

Liability of member association to land bank for expense of issuing bonds, see § 429.

§ 379. Membership, dues and capital.

The members of a savings and loan association shall be only those persons to whom its shares have been issued or transferred, in accordance with the provisions of its by-laws. Their membership shall continue until such shares have been matured and paid, withdrawn, retired, suspended or forfeited. The payments made to any such association upon shares issued by it shall be called "dues." They shall be paid in such sums and at such times as are provided by the by-laws until the shares reach their matured value, are withdrawn, retired or forfeited. The capital of every such association shall consist of the dues and dividends credited to its members upon their shares either individually or by series.

Source.—The provisions as to membership are from former § 214; those as to dues are from former § 216; those as to capital are from former § 215.

§ 380. Shares in names of two persons or of person acting in fiduciary capacity.

When shares shall have been issued in the name of two persons, or their survivor, in either joint or several form, the right to vote

upon such shares at any meeting of the association shall be no greater than if the shares were held by an individual, and payment to either person shall discharge the liability. Upon the death of either of such joint owners, the association shall be liable only to the survivor.

Persons who hold shares in a fiduciary capacity shall have all the rights and privileges of membership except the right to hold office. Whenever a person holding shares in such capacity dies and no notice of the revocation or termination of the trust shall have been given to the association in writing, the withdrawal value of the shares or any part thereof, may be paid to the beneficiary. The association shall not be liable to beneficiaries for moneys paid to their guardians or trustees on account of such shares.

Source.—Former § 214.

§ 381. Matured value of shares hereafter issued.

All shares hereafter issued by any savings and loan association shall have a matured value of not less than one hundred and not more than two hundred dollars; except that any association incorporated prior to January first, nineteen hundred six, which has issued instalment shares, before this act takes effect, having a matured value of two hundred and fifty dollars per share, may, with the written approval of the superintendent of banks, continue to issue such shares.

Source.—Former § 215.

§ 382. Character of association; dividends, how credited.

Every savings and loan association shall be either permanent or serial in character. A permanent association may issue shares at any time and credit dividends thereon in the pass-books of its members. A serial association shall issue its instalment shares in series and credit the dividends apportioned to such shares by series; but no additional shares shall be issued in any series after a dividend has been credited thereto unless the person to whom such shares shall be issued shall pay therefor the book value of such shares at the last declaration of dividends plus the dues payable thereon since such declaration, with accrued interest. Dividends credited

by serial associations upon other classes of shares issued by it may be credited in the pass-books of its members.

Source.—Former § 215. The limitation to “instalment” shares of the requirement for issuance in series is new, and the other provisions regarding serial associations are considerably altered. The last sentence is new.

§ 383. Classes of shares; dues thereon; when payable; their participation in apportioned profits.

Shares in any savings and loan association that have been transferred to it as security for the repayment of a loan, shall be called “pledged shares.” Shares which have not been so transferred shall be called “free shares.” Any such association may, when so provided in its by-laws, issue:

1. Instalment shares, with full participation in all dividends that may be declared by such association, and upon which a regular stipulated payment of dues shall be made at stated periods expressed in its by-laws, until such shares reach their matured value or are withdrawn, retired or forfeited; or with no participation in such dividends, the dues being payable thereon in regularly increasing amounts at stated periods expressed in its by-laws, and being immediately applied in reduction of a debt due to the association from the holder thereof in accordance with a direction given by him.

2. Savings shares, which shall participate in the dividends apportioned by the association and shall be credited therewith at a rate not less than sixty per centum nor more than ninety per centum of the rate of dividend apportioned and credited to instalment shares, as the by-laws shall provide, and upon which dues shall be paid in such sums and at such times as the holder thereof may elect, until the shares reach their matured value, are withdrawn or retired.

3. Accumulative prepaid shares upon which a single payment of dues to the amount of fifty dollars or more per share shall be paid at the time when such shares are issued. The dividends on these shares shall not exceed the dividends apportioned and credited to instalment shares, and the whole or a part of the dividends apportioned to these shares shall be credited to them until such shares are matured, withdrawn or retired. Any balance of such dividends not so credited shall be paid in cash.

4. Income shares, upon which a single payment of dues amount-

ing to one hundred dollars per share shall be paid at the time when such shares are issued. The dividends on these shares shall be paid in cash at a rate not exceeding at any time the rate at which dividends are apportioned and credited to instalment shares. Income shares may be issued which shall not be withdrawable until the expiration of fixed periods, not exceeding ten years, if the by-laws so provide. Whenever income shares are issued which are not withdrawable until the expiration of a fixed period, the statement that they are not withdrawable until the expiration of such fixed period shall be printed upon the face of the certificate of shares in type of the same size as that used in the body of the certificate.

5. Juvenile savings shares, which may be issued in the name of any minor. Such shares shall be held for the exclusive right and benefit of the minor and free from the control or lien of any other persons. The dues paid upon these shares, together with the dividends credited thereto, may be withdrawn by the person in whose name they were issued during his minority, and his receipt or acquittance shall be a valid and sufficient release and discharge to the association for such accumulated savings, together with the dividends credited thereon, or any part thereof. Juvenile savings shares shall not be chargeable with losses of any kind, nor shall the holder thereof be required to make regular or specific payments, nor shall they entitle him to vote at any meeting of shareholders. Such shares may be credited with dividends at a rate not less than sixty per centum nor more than ninety per centum of the rate of dividend apportioned and credited to instalment shares, as the by-laws shall provide. The matured value of all the juvenile savings shares issued by an association shall not exceed in the aggregate, at the time of issue, twenty-five per centum of the aggregate matured value of existing shares of all other classes.

Source.—Former § 215. In the first clause of subdivision 1 the word “retired” has been inserted after the word “withdrawn;” the second clause is new. In subdivision 2 the words “or retired” are new, and the words “there shall be no fine for non-payment of dues nor any forfeiture of such shares,” which were in former § 215, have been omitted. In subdivision 3 the words “or retired” are new. In subdivision 4 the words “in type of the same size” have been substituted for “in type at least twice the size”. In subdivision 5 the provision of the old law that such shares shall not be chargeable with “fines” has been omitted.

§ 384. Loans and investments.

Subject to the provisions of this article and its by-laws, any savings and loan association may invest the funds received by it as follows:

1. In loans to its members:

(a) Upon their bonds secured by the transfer and pledge to the association of instalment shares having a matured value at least equal to the amount of such loans and further secured by mortgages upon real estate.

(b) Upon their bonds secured by the transfer and pledge to the association of instalment shares having a matured value at least equal to the amount of such loans and further secured by mortgages upon real estate, by the terms of which the dues paid by the borrower, may, by his direction, be immediately applied in reduction of his indebtedness; provided, however, that the yearly payment of dues and interest required on any such loan shall not be less than twelve per centum of the amount lent, if such amount is in excess of seventy per centum of the appraised value of the real estate described in the mortgage, determined in accordance with subdivision four of section three hundred eighty-six of this article, and not less than nine per centum of the amount lent, if such amount is in excess of sixty per centum and not more than seventy per centum of such appraised value; and provided further that no premium shall be charged upon any such loan.

(c) Upon their notes secured by the transfer and pledge to the association of shares not previously transferred or pledged to it, the withdrawal value of which shall exceed the amount of any such loan, and all charges that may accrue for a period of six months upon such loan and upon the shares so transferred and pledged.

Any such bonds, mortgages or notes taken by any such association from its members shall be deemed conditioned upon the performance of the provisions of this article and the by-laws of the association relating to the payment of loans, premium, interest, dues, fees and fines, although the same may not be fully expressed therein.

2. In real property as follows:

(a) A plot whereon there is or may be erected a building or buildings suitable for the convenient transaction of its business, from portions of which, not required for its own use, a revenue may be derived.

(b) Such as shall be conveyed to it in satisfaction of debts previously contracted in the course of its business.

(c) Such as it shall purchase at sales under judgments, decrees or mortgages held by it.

3. In shares of the land bank of the state of New York, not to exceed ten per centum of its resources at the time of such investment.

4. If at any time it has funds in excess of the amount needed for loans to its members and the payment of matured shares and withdrawals:

(a) In lawfully issued obligations of the land bank of the state of New York.

(b) In securities which are authorized as investments for savings banks in section two hundred thirty-nine of this chapter.

(c) In bonds and mortgages on unincumbered real estate situated in the state of New Jersey to the extent of sixty per centum of the value thereof; provided that the real estate is "improved" as such term is defined in subdivision five of section three hundred eighty-six of this article and is located within fifty miles of the place of business of such association.

(d) In loans to other savings and loan associations.

Source.—Former §§ 218, 222. The provisions of subdivision 2, which is substituted for former § 222, are identical with § 106, subd. 6, relating to powers of banks, and with § 239, subd. 9, relating to investments by savings banks. In subdivision 1, paragraph (b), the words "and not more than seventy per centum" are new, as are the words in paragraph (c), "not previously transferred or pledged to it." Subdivision 3 is new. Paragraph (a) of subdivision 4 is new.

§ 385. Premium, premium plan, and restrictions.

Any savings and loan association may charge premium or interest in excess of the legal rate upon loans to its members, if the by-laws so provide, upon one and only one of the following premium plans, the amount of premium being determined either by agreement or by bidding for the loan in open meeting:

1. The instalment premium plan, in which the premium shall be a certain sum of money per share which the borrower shall pay with each stipulated payment of interest, in addition to such interest.

2. The premium-interest plan, in which the premium shall be included in the rate of interest which the borrower shall pay upon his loan during the continuance of such loan.

3. The gross premium plan with proportionate rebates for the unexpired period of the loan, upon repayment thereof before maturity, or upon foreclosure of the security held thereon. Such premium may be paid in one sum, deducted from the amount of the loan or included in the amount of the mortgage. The earned portion of such gross premium shall be determined by dividing by the face of such loan the total dues and dividends credited upon the shares transferred as collateral security. The unearned or rebatable portion of such premium shall be carried as a liability on the books of such association, and at each distribution of profits the earned portion of the premium as determined above may be transferred therefrom to the current earnings of the association. Such gross premium shall not exceed ten per centum of the matured value of the shares transferred as collateral security, nor shall the gross premium charged and collected, when taken together with the interest, either when the loan is repaid, or foreclosed, amount to more than the income which would have been derived from such loan had such premium and interest been charged upon the premium-interest plan at the rate of eight per centum per annum.

Any association which has heretofore agreed to rebate any portion of the gross premium included in its mortgage loans shall hereafter carry the unearned or rebatable premium as a liability upon its books; and no association shall hereafter rebate or repay to a borrowing member any portion of the gross premium included in its mortgage loans existing on the first day of January, nineteen hundred eleven, unless such unearned or rebatable premium is shown as a liability upon its books. Except as hereinbefore provided, any association which has heretofore made mortgage loans upon the gross premium plan without rebates, and has not agreed to rebate or repay to borrowing members the gross premium included in its mortgage loans existing on the first day of

January, nineteen hundred eleven, and which did not on or before such day treat any portion of such gross premium as a liability, shall not hereafter rebate or repay to its members any portion of such gross premium.

The member of any such association who shall agree to pay the highest premium shall be entitled to a loan in preference to other members, upon giving the security required. If, however, such borrower neglects to furnish security satisfactory to the board of directors within a reasonable time, his right to the loan shall be forfeited, and he may be charged with all the necessary expenses incurred by such association in arranging for the proposed loan. The interest and premium charged by any such association on loans to members, when taken together, shall not exceed eight per centum per annum, upon the sum actually lent, except that when any such loan shall be secured by a mortgage upon real estate, upon which real estate there is any prior mortgage, lien or encumbrance, interest and premium not exceeding eight per centum per annum may be charged upon the amount of the prior or underlying mortgages, liens or encumbrances, from the date of the execution of the junior mortgage, and upon the sums actually advanced by such association, from the date of their payment.

The directors of any association which, prior to the first day of January, nineteen hundred eleven, charged its borrowing members interest and premium in excess of the annual rate of eight per centum may classify its shares according to the date of issue, and in the declaration of dividends may apportion to shares issued prior to the first day of January, nineteen hundred eleven, any income derived from such loans theretofore made in excess of such rate.

Source.—Former § 220, except the sentence beginning “If, however, such borrower neglects to furnish security satisfactory” etc., which comes from former § 218, subd. a. In subdivision 3 the language “by dividing by the face of such loan the total dues and dividends credited upon the shares transferred as collateral security” has been substituted for the old wording “by the ratio existing between the dues and dividends credited upon the shares transferred as collateral security for the loan, and the total amount loaned.” The words “had such premium and interest been charged upon the premium interest plan” are new.

CHARGING PREMIUM NOT USURY.—The taking of a premium upon making a loan or advance upon the shares of a member is authorized by statute and does not render the loan usurious. *Concordia Sav., etc., Assoc. v. Read*, 93 N. Y. 474.

§ 386. Restrictions on real estate mortgages.

No savings and loan association shall:

1. Take a mortgage upon real estate located more than fifty miles from its place of business, except a purchase money mortgage on property sold by it.

2. Take a mortgage upon real estate which is not a first lien upon the property described in such mortgage, unless every prior mortgage, lien or encumbrance thereon is owned by it, except as provided in subdivision three of this section, and no such prior mortgage, lien or encumbrance shall be sold, transferred or assigned by such association until every subsequent mortgage, lien or encumbrance owned by it shall have been fully paid and satisfied.

3. Take a mortgage upon real estate upon which there are any prior mortgages, liens or encumbrances not owned and held by it, except upon the following terms and limitations:

(a) No sum of money shall be invested in a bond or mortgage upon real estate if such sum, together with the amount of all prior mortgages, liens or encumbrances upon the real estate described in such mortgage, exceeds seventy-five per centum of the appraised value of such real estate, as provided in this section.

(b) No such loan or investment shall be made upon vacant or unimproved real estate or upon the gross premium plan.

(c) If any such association shall have lent or invested any portion of its funds in bonds and mortgages upon real estate upon which there are any prior mortgages, liens or encumbrances, it shall invest not less than fifteen per centum the first year, twenty per centum the second year, and thereafter twenty-five per centum of its receipts available for lending purposes in the same securities in which savings banks are, by section two hundred thirty-nine of this chapter, authorized to invest their deposits and the income therefrom, until the sums so invested shall amount to at least twenty-five per centum of all mortgages, liens and encumbrances underlying the mortgages or liens held by such association. The sums so invested shall hereafter be maintained at twenty-five per centum of such underlying mortgages, liens and encumbrances, except that after such fund shall amount to fifteen per centum of all such underlying mortgages, liens and encumbrances, any portion thereof in excess of such fifteen per centum may, in case of emergency, be used in the payment of withdrawals.

(d) No such association shall invest in any bond and mortgage on real estate upon which there are any prior or underlying mortgages, liens or encumbrances, if the aggregate of all the prior or underlying mortgages, liens and encumbrances on real estate upon which it holds mortgages or to which it has taken title, together with the money borrowed by it, exceeds or by the making of such investment will exceed twenty per centum of its accumulated capital, or two thousand dollars if its accumulated capital is not more than ten thousand dollars.

(e) No such investment shall be made except by a majority vote of all the members of the board of directors, taken by ayes and nays and recorded in the minutes.

4. Take a mortgage except upon the written and signed certificate of two or more appraisers appointed by the board of directors stating that they have examined the real estate described in such mortgage and that in their judgment it affords adequate security for such loan or investment. Such certificate shall show separately the value of the land, the value of the improvements and of the building or buildings erected thereon. The term "improvements" shall include fences of a substantial character, artificial water supply systems, drains and private roads. Such certificate shall be filed and preserved among the records of the association, and any member shall have access thereto.

5. Take a mortgage upon vacant real estate, if the amount secured by such mortgage exceeds fifty per centum of the appraised value thereof as shown by such certificate, or upon unimproved real estate, if the amount so secured exceeds sixty per centum of the appraised value thereof, as shown by such certificate, or upon improved real estate, if the amount so secured exceeds eighty per centum of the appraised value thereof as shown by such certificate.

Real estate shall be considered "vacant," upon which there is no building suitable for residence, business, manufacturing or agricultural purposes; provided, that if the money borrowed is to be used for erecting any such building and is to be advanced as the work progresses, the loan shall be based upon the condition of the real estate when the building shall have been completed.

Real estate shall be considered "improved," if the appraised value of the building or buildings thereon, suitable for residence,

business, manufacturing or agricultural purposes, shall equal at least the appraised value of the land alone; and real estate shall be deemed "unimproved," if the appraised value of the buildings and improvements is not equal to the value of the land.

6. Take a mortgage upon vacant real estate if the total of such loans, plus the value of vacant lands owned by the association, exceeds, or by the taking of such mortgage will exceed, fifteen per centum of its accumulated capital.

7. Every mortgage and every assignment of a mortgage taken by any such association shall be immediately recorded in the office of the proper recording officer of the county in which the real estate described in such mortgage is located.

Source.—Former §§ 219; 220, subd. c; 223. In subdivision 1 the words "except a purchase money mortgage on property sold by it" are new. In subdivision 3, paragraph (b) the words "or unimproved" have been inserted after the word "vacant." In subdivision 4 the provisions as to the contents of the certificate and definition of "improvements" are new. In subdivision 5 the distinctions between "vacant" and "unimproved" land, the limitation on the amount of mortgages on "improved" land and the definitions of "vacant," "improved" and "unimproved" are new.

MORTGAGE ON VACANT LAND.—It would not be lawful for a savings and loan association to take a mortgage upon vacant land where its aggregate loans upon land would exceed 15 per cent. of the accumulated capital of the association, although, by the substitution of these mortgages, the amount of these investments would be reduced. *Atty.-Gen. Rep. (1811) vol. 2, 653.*

§ 387. Restrictions on taking, holding and conveying real estate.

All real estate purchased by any such association or taken by it in settlement of debts due it, shall be conveyed to it directly by name and the conveyance immediately recorded in the office of the proper recording officer of the county in which such real estate is located.

Every parcel of real estate purchased or acquired by any such association shall be sold by it within five years of the date on which it shall have been acquired unless:

1. There shall be a building thereon occupied by it as an office; or
2. The superintendent of banks, on application of its board of directors, shall have extended the time within which such sale shall be made.

No purchase or exchange of real estate shall be made by any such association unless authorized by a vote of two-thirds of its directors and, if such exchange involves the payment by the association of any difference in value, by the written approval of the superintendent of banks.

Source.—New. Is identical with § 107, except as to the last paragraph which comes from former § 222. See the annotations to § 107.

§ 388. Power to borrow; restrictions thereon.

Any savings and loan association may borrow money for a term not to exceed one year if;

1. It has been authorized so to do by the vote of a majority of its board of directors, taken by ayes and nays and recorded in its minutes.

2. The aggregate of the money borrowed by it and the prior or underlying mortgages, liens or encumbrances upon the real estate upon which it holds mortgages or to which it has taken title does not exceed twenty per centum of its accumulated capital, or two thousand dollars if its accumulated capital does not exceed ten thousand dollars. This restriction shall not apply to money obtained from the land bank of the state of New York through the issue of bonds on its account and secured by the assignment of bonds and mortgages or other securities by such association.

Any such association, however, may accept from its members advance payments of dues upon its instalment shares and advance payments of interest and premium upon its loans; but such payments shall not be accepted in advance for a longer period than one year, nor shall the interest paid upon such advance payments exceed the rate of six per centum per annum.

Source.—Former § 223. The provisions regarding advance payments are from former § 211, subd. m.

Amended by L. 1916, chap. 139. In effect April 6, 1916.

§ 389. Fines and restrictions thereon.

Any such association may impose fines upon its shareholders, their legal representatives or successors in interest, if they neglect or refuse to pay dues, interest or premium, when due; but no such fine shall exceed two per centum per month for the period during which such dues, interest and premium have remained in default, except that an association whose by-laws provide for the weekly payment of dues may, in lieu of any such fine, collect a fine of one cent per share for each default in the payment of dues. No fine shall, however, be charged against or deducted from the dues

actually paid by a member and no fines or penalties other than those herein specified shall be imposed.

Source.—Former § 211, subd. k.

§ 390. Restrictions on payment of expenses.

The expenses of every such association shall be paid from its earnings; and no deduction from dues shall be made either directly or indirectly for that purpose. No such association shall pay, or become liable to pay, either directly or indirectly, in the course of any calendar year, as salaries, commissioners, fees or other compensation to its officers, directors, auditors, attorneys, agents, clerks, and all other employees, and for rent, advertising, commissions, and all other operating expenses, sums of money the aggregate of which shall exceed two and one-half per centum of the total amount of the dues actually received and credited to its members and the dividends duly declared and credited thereon, on the first day of such calendar year, including dues and dividends credited to the holders of matured shares.

The term, "operating expenses," as used in this section, shall not include taxes, assessments, repairs or insurance of real estate, commissions on the sale of real estate, reasonable charges for collecting the rent or superintending the repair or improvement of real estate situated outside of the limits of New York state and more than two hundred miles from the office of the association, or any interest which the corporation may have paid or become liable to pay, or proper legal charges for searching titles or the preparation of legal papers, or expenses of foreclosure suits or other litigation, or charges for examinations made by the direction of the superintendent of banks.

The previous provisions of this section limiting operating expenses shall not apply to any association whose accumulated capital is less than forty thousand dollars; but the annual operating expenses of any such association shall not exceed one thousand dollars. No savings and loan association shall, by salary, fees, expenses or otherwise, pay any officer, director, agent or other person for selling its shares or soliciting subscriptions for them.

Source.—Former § 227 rearranged.

COMPENSATION OF ATTORNEY.—Where a contract for legal services to be rendered a savings and loan association provided for payment of a sum which would, with the other operating expenses, exceed $2\frac{1}{2}$ per cent. of dues actually received and credited and dividends duly declared and credited, it was held that the attorney might recover an amount equal to the difference between the amount limited by the statute and the amount paid for other operating expenses during the year. *Gibbs v. Knickerbocker Sav. & L. Assoc.*, 152 N. Y. Supp. 4.

§ 391. Restrictions as to entries in books; amortization of securities.

1. No savings and loan association shall by any system of accounting or any device of bookkeeping, directly or indirectly, enter any of its assets upon its books in the name of any other person, partnership, unincorporated association or corporation, or under any title or designation that is not truly descriptive thereof.

2. The stocks or bonds, or other interest-bearing obligations purchased by a savings and loan association shall not be entered on its books at more than the actual cost thereof, and shall not thereafter be carried upon its books for a longer period than until the next declaration of dividends, or in any event for more than one year, at a valuation exceeding their present cost as determined by amortization, that is, by deducting from the cost of any such stock or security purchased for a sum in excess of the amount payable thereon at maturity, and charging to profit and loss, a sufficient sum to bring it to par at maturity, or adding to the cost of any such stock or security purchased at less than the amount payable thereon at maturity, and crediting to profit and loss, a sufficient sum to bring it to par at maturity.

3. No savings and loan association shall enter or at any time carry on its books the real estate and the building or buildings thereon, used by it as its place of business, at a valuation exceeding their actual cost to such savings and loan association.

4. No real estate taken by such an association in satisfaction of debts previously contracted in the course of its business or purchased at sales under judgments, decrees or mortgages held by it, shall be entered or carried on its books at a value in excess of the amount due the association as principal at the time of the satisfaction of such debt, or at the time of the commencement of the action or proceeding in which such property was purchased, less the withdrawal value of the shares pledged as security for such debt, unless permanent improvements have been made thereon and the value of the property as improved shall have been determined by a written appraisal signed by at least three directors of such savings and loan association and filed with such association.

5. Where a mortgage is taken by any such association upon real estate upon which there are any prior mortgages, liens or encumbrances, every such prior mortgage, lien or encumbrance

shall be carried on the books of the association as a liability, whether assumed by it or not.

6. Every savings and loan association shall, moreover, conform its method of keeping its books and records to such orders in respect thereto as shall have been made and promulgated by the superintendent of banks pursuant to section fifty-six of this chapter. Any savings and loan association that refuses or neglects to obey any such order shall be subject to a penalty of twenty-five dollars for each day it so refuses or neglects.

Source.—Subdivisions 1–3 are new, corresponding to the same subdivisions of § 109, relating to banks. Subdivisions 4 and 5 are from former § 222. Subdivision 6 is from former § 8. Subdivision 4 broadens the limitation contained in former § 222, under which property taken at foreclosure or in extinguishment of a debt could only be carried on the books at a valuation not greater than “the sum due the association for principal * * * at the time of the first default.”

CROSS-REFERENCES.—Similar restrictions as to other corporations subject to the Banking Law, see § 109 and cross-references there given.

§ 392. Guaranty fund.

Every savings and loan association shall accumulate a fund as provided in section three hundred ninety-five of this article to be known as a guaranty fund, which shall ultimately be equal to at least five per centum of its accumulated capital and to at least fifty per centum of the book value of all real estate owned by it. Such fund shall not be available for the payment of expenses so long as such association has undivided profits, and shall not be available for the payment of dividends; but any such association may charge against such fund any losses upon its investments, whether resulting from depreciation or otherwise, without encroaching upon its undivided profits or its net earnings until such guaranty fund is exhausted. Such fund may be created or increased by contributions and by transfers from undivided profits or from net earnings. Any sums heretofore transferred to the contingent fund of any such association shall constitute its guaranty fund when this act takes effect.

Source.—Former § 225. In the old law the term “contingent fund” was employed. In the revised language the association is clearly prohibited from using any part of the guaranty fund for dividends. Its primary function is for the purpose of having a reserve against losses, and for expenses *after undivided profits are exhausted.*

CROSS-REFERENCES.— Definition of "guaranty fund," see § 3; guaranty fund of savings bank, see § 252; of land bank, see § 427; of credit union, see § 457.

§ 393. Amount of guaranty fund at close of dividend period; how determined.

The amount of the guaranty fund of a savings and loan association at the close of any dividend period may be determined by adding to its guaranty fund, if any, at the beginning of such period any appreciation in the estimated market value of its savings bank securities, resulting from a revaluation thereof by the superintendent of banks, as provided in section fifty-three of this chapter, and sums recovered on items previously charged off and any sums allowed by the superintendent of banks on account of assets previously disallowed and charged off, and deducting therefrom all losses sustained by such association during such period. In the computation of losses, all items shall be included which shall have been disallowed by its board of directors, or by the superintendent of banks, together with any depreciation in the value of its savings bank securities, resulting from a revaluation thereof by the superintendent, in accordance with the provisions of section fifty-three of this chapter, and all debts owing to it upon which no interest shall have been paid for more than one year, or on which a judgment has been recovered which shall have remained unsatisfied for more than two years, unless the superintendent, upon the application of such association, shall have fixed a value at which such debts may be allowed, or unless such debts are secured by a first mortgage upon real estate, in either of which events only the amount by which such debts exceed the value allowed by the superintendent or the cash value of the real estate securing them as determined by written appraisal signed by at least three of the directors of such savings and loan association and filed with it, need be so deducted.

Source.—New. The section is practically identical with subd. 2 of § 252 relating to savings banks.

§ 394. Calculation of earnings for dividend period.

1. Gross earnings. To determine the amount of gross earnings of a savings and loan association during any dividend period the following items may be included:

(a) All earnings actually received during such period, less interest and premium earned or accrued and unpaid included in the last previous calculation of earnings;

(b) Interest and premium earned or accrued and unpaid upon debts owing to it secured by collateral as authorized by this article upon which no default for more than one year exists and upon corporate stocks, bonds, or other interest-bearing obligations owned by it upon which there is no default;

(c) The sums added to the cost of securities purchased for less than par as a result of amortization, provided the market value of such securities is at least equal to their present cost as determined by amortization;

(d) Any profits actually received during such period from the sale of securities, real estate or other property owned by it.

2. Net earnings. To determine the amount of its net earnings for such dividend period the following items shall be deducted from gross earnings:

(a) All expenses paid or incurred, both ordinary and extraordinary, in the transaction of its business, the collection of its debts and the management of its affairs, less expenses incurred and interest accrued upon its debts deducted at the last previous calculation of net earnings for dividend purposes;

(b) Interest paid or accrued and unpaid upon debts owing by it;

(c) The amounts deducted through amortization from the cost of corporate stocks, bonds or other interest-bearing obligations purchased above par in order to bring them to par at maturity;

(d) Any losses that may have been sustained by it in excess of its guaranty fund.

The balance thus obtained shall constitute the net earnings of such savings and loan association for such period.

Source.—Former § 28. The section is conformed to § 116 relating to banks.

CROSS-REFERENCES.—Definitions of "guaranty fund," "net earnings" and "dividend period," see § 3.

Similar provisions as to banks, see § 116; as to trust companies, see § 202; as to savings banks, see § 254.

§ 395. Net earnings credited for dividend purposes; credits to guaranty fund and undivided profits; dividends to shareholders.

When the net earnings of any such association have been determined at the close of a dividend period, as provided in the immediately preceding section of this article, if its guaranty fund does not equal five per centum of its accumulated capital and fifty per centum of the book value of the real estate held by it, one-twentieth of such net earnings shall be credited to its guaranty fund, or so much thereof less than one-twentieth as will make such fund equal five per centum of its accumulated capital, or fifty per centum of the book value of its real estate if the latter amount exceeds five per centum of its accumulated capital. The balance of such net earnings or the entire amount thereof, if its guaranty fund equals the amount required by section three hundred ninety-two of this chapter, may be credited to the association's profit and loss account; or, if the expenses and losses of such savings and loan association exceed its gross earnings, such excess shall be charged to its profit and loss account. The credit balance of such account shall constitute the undivided profits at the close of such dividend period and shall be available for dividends. The directors of any such association may annually, semi-annually or quarterly but not more frequently declare such dividends as they shall judge expedient from such undivided profits. But no such association shall declare, credit or pay any dividend to its shareholders except by a vote of the board of directors duly entered upon its minutes which shall show the ayes and nays; nor shall it declare, credit or pay any such dividend until it shall have made good any existing impairment of its accumulated capital. Such dividends shall be apportioned upon the dues and dividends credited to its members.

The directors of any such association, in addition to the transfers to the guaranty fund required by this section may transfer to such guaranty fund from such undivided profits or continue to carry as undivided profits such sum or sums as they may deem wise; provided, however, that whenever the surplus of any such association including its undivided profits and guaranty fund exceeds fifteen per centum of the accumulated capital, the board of directors shall declare such extra dividends as may be necessary to distribute such excess among its shareholders.

If the by-laws of any such association so provide, only a portion of any such dividend need be credited to savings, accumulative prepaid, income or juvenile savings shares and the remaining portion thereof shall revert to the association, and the portion of such dividend credited to such shares may vary according to the class of shares; and upon the withdrawal of members, portions of the dividends credited to their shares may be retained by such association, and such deductions may be made in accordance with a schedule, clearly and fully set forth in the by-laws, and based upon duration of membership, provided, however, that the portion of such dividends that may be retained by the association upon the withdrawal of a share shall in no case exceed the sum of forty per centum of the dividends apportioned and credited upon such share.

Source.—New. The provision against payment of dividends while the accumulated capital is impaired comes from former § 29. Former § 226 required losses in excess of the contingent fund to be charged against undivided profits. Under former § 224 profits were to be distributed “at least annually.”

CROSS-REFERENCES.—Definitions of “guaranty fund,” “net earnings,” “undivided profits” and “dividend period,” see § 3.

Similar provision as to banks, see § 118; as to trust companies, see § 204; as to savings banks, see §§ 255, 256; as to credit unions, see § 459.

Criminal liability for paying dividends out of capital, see *Penal Law*, § 664, post.

§ 396. Matured shares.

Whenever the dues and dividends credited to the instalment, savings, accumulative prepaid or juvenile savings shares of any such association shall equal their matured value, notice of such maturity shall be given to the holders thereof and the payment of dues thereon shall cease. For the purpose of maturing shares, a special dividend may be credited between dividend dates to shares nearly matured at the same rate at which the last periodical dividend was credited, provided the earnings for the current dividend period justify such special dividend. If free, such shares shall be payable immediately, subject, however, to the provisions of section three hundred ninety-eight of this article.

Whenever certificates or pass-books representing matured shares shall be presented for payment, and payment is deferred, the sec-

retary or other officer of any such association discharging similar duties, shall in the presence of the member or his representative, write upon the certificate or pass-book the date and hour at which such certificate or pass-book was presented and demand of payment made. Matured shares shall be credited with dividends, until paid, at the same rate as other shares of the same class. If pledged, the value of such shares shall be applied in payment of the loan which they secure, and such shares shall be canceled and any other collateral shall be returned.

Source.—Former §§ 217, 229. The words “accumulative prepaid” are new.

CROSS-REFERENCES.—Failure to pay for two years after demand as ground for superintendent’s taking possession, see § 57.

TIME OF MATURITY.—A savings and loan association has no power to issue a certificate having a fixed period of maturity, and any time of maturity specified therein will be considered to be an estimated time. *O’Malley v. People’s B., L. & S. Assoc.*, 92 Hun 572.

§ 397. Withdrawal of free shares; notice thereof and withdrawal value.

The accumulations upon free shares of any such association may be withdrawn and the shares canceled after sixty days’ written notice of such intention filed with its secretary at the place of business of the association, but the directors may waive such notice. The withdrawing shareholder shall, subject to the provisions of the next succeeding section of this article, be paid the withdrawal value of his shares as determined at the last declaration of dividends before such notice, together with all dues paid thereon since such declaration, less fines and other obligations; but no association shall pay to a withdrawing shareholder any sum in excess of the dues credited upon its books, together with such dividends as have been duly declared and credited thereto.

A withdrawing member, until paid, shall be entitled to dividends upon his shares at a rate equal to at least four-fifths of the rate at which dividends are credited upon other shares of the same class.

The board of directors of permanent associations may permit a member to withdraw part of the accumulations to his credit without thereby reducing the number of shares held by him; and the directors of serial associations may permit the holders of savings

and juvenile savings shares to withdraw in the same manner part of the amounts standing to the credit of such shares.

Where payment of a withdrawal is deferred it shall be the duty of the secretary or other officer discharging such duties in the presence of the member or his representative to enter upon each notice of withdrawal presented, the date and hour of presentation of such notice of withdrawal.

Source.—Former § 229. The words “before such notice” have been substituted for the words “before the payment is made.” The provision for partial withdrawal of savings and juvenile savings shares is new.

CROSS-REFERENCES.—Failure to pay for two years after demand as ground for superintendent's taking possession, see § 57.

TO WHAT AMOUNT SHAREHOLDER ENTITLED.—The shareholder is entitled to such amount only as the certificate has earned. *O'Malley v. People's B., L. & S. Assoc.*, 92 Hun 572.

APPLICATION HAS PRECEDENCE EXCEPT AS TO ACTUAL EXPENSES.—Applications for withdrawals have, in the order of their filing, precedence over all other uses of the funds, except the actual expenses of the association. The board of directors cannot prefer applications for loans to applications for withdrawals and thus deplete the treasury, which would otherwise be sufficient to pay withdrawals in full in their order. *Wolfe v. Conkey Avenue Sav., etc., Assoc.*, 75 Hun 201.

INSUFFICIENT COMPLAINT.—For a complaint held to be demurrable for failure to state facts sufficient to constitute a cause of action, in an action for an accounting by one claiming to be a shareholder under an agreement to pay in monthly installments, see *Kenefick v. Co-operative Bldg. Bank*, 62 Misc. 519.

§ 398. Restrictions on the payment of matured shares and withdrawals.

No more than two-thirds of the receipts of any savings and loan association shall be applied to the payment of matured shares and withdrawals without the consent of the board of directors, except as provided in this section. Whenever two-thirds of such receipts are not sufficient to pay all demands, one-third of such receipts shall be applied first to the payment of matured and income shares in the order in which demand of payment was made or notice of withdrawal filed, and one-third to the payment of instalment, savings, accumulative prepaid and juvenile savings shares filed for withdrawal and in the order in which notices of withdrawal were filed.

Whenever any payment of matured shares shall have been de-

manded or any notice of withdrawal shall have been filed, and payment of such matured shares or withdrawal shall not have been made within six months from the date of demand or of the filing of such notice, all the receipts of the association from dues, interest, premium, borrowed money, loans repaid and the proceeds of all other investments, shall after the payment of expenses and general indebtedness, be applied to the payment of matured shares and withdrawals in the order in which payment of such matured shares was demanded or notices of withdrawals filed; and the board of directors or the superintendent of banks may direct that such claims shall be paid upon a ratable and proportionate basis. Whenever such demands shall have been made or notices shall have been filed, and such matured shares or withdrawals have remained wholly or in part unpaid for two years thereafter, the superintendent of banks may take possession of the property and business of any such association as provided in section fifty-seven of this chapter.

Source.—Former § 229. The wording of the second sentence has been changed.

NOT LIMITED TO MATURED VALUE.—In the payment of matured shares the association is not limited to the matured value as stated in the by-laws; the entire earnings may legally be paid to the shareholders of any maturing series. Atty.-Gen. Rep. (1910) 828.

§ 399. Retirement of shares.

The board of directors of any savings and loan association may retire all classes of free shares by enforcing withdrawals of the same, provided that the by-laws shall clearly state the manner in which such withdrawals may be enforced, and the holders of such shares are paid the full value of their shares less all lawful obligations.

Source.—Former § 229.

§ 400. Suspension and forfeiture of shares.

Whenever a member of any such association shall for one year have failed to pay dues upon any instalment shares owned by him, such association may serve notice upon him to pay such dues within a time stated in such notice. Upon the failure of such shareholder to make such payment, the withdrawal value of his

shares may be determined and such withdrawal value transferred and credited to him in a suspense account. Upon such transfer, the rights of such member shall cease except the right to withdraw the value of such shares as thus determined and such dividends as may thereafter be credited thereon within ten years from the date of such transfer. After such transfer, such member shall be entitled to at least four-fifths of the dividends apportioned to such shares; and unless the value thereof as thus determined is withdrawn by such member within ten years from the date of such transfer, his interest therein may be forfeited, if the by-laws so provide, and the amount standing to the credit of such shares transferred to the guaranty fund of such association.

Source.—Former § 216. The words “within a time stated in such notice” have been substituted for the words “after ten days’ notice.” The provision for transfer to the guaranty fund was, under former § 216, for transfer to “undivided earnings.”

A STRICT COMPLIANCE WITH THE STATUTE IS NECESSARY where an attempt is made to declare shares forfeited. Atty.-Gen. Rep. (1896) 157.

§ 401. Transfer of shares and conditions attaching thereto.

No transfer of shares shall be binding upon the association until the same has been made upon its books; and the transferee shall take the same charged with all liabilities to the association and the conditions attaching thereto at the time of the transfer. If the shares are in the names of more than one person, a transfer thereof executed by one or more of such persons shall authorize the association to transfer the same.

Source.—Former § 211, subd. j.

§ 402. Repayment of loans; application of pledged shares.

Any loan made by a savings and loan association to a member may be repaid at any time provided the member shall pay the principal due thereon, less the withdrawal value of the shares transferred as security therefor, the premium earned and the interest accrued at the date of such repayment, and all sums advanced by the association for taxes, assessments, or insurance premiums, with interest thereon; and in addition thereto:

1. Interest on the principal repaid for a period of three months after the date of repayment; or

2. Interest and premium upon such principal for the whole year when so provided in the by-laws of the association, if the repayment be made at any time within one year from the date of the mortgage or other evidence of debt.

Any such borrowing member may pay upon any such loan a sum equal to the matured value of one or more of the instalment shares transferred and pledged as security therefor upon the same proportionate terms as are provided in this section for payment in full.

Whenever any mortgage is foreclosed, the withdrawal value of the shares transferred and pledged to any such association for the payment of the loan shall be applied to the extinguishment of the indebtedness of the member as hereinbefore determined, and his rights under such shares shall terminate.

If any such association is in process of voluntary liquidation, the shares of a borrowing member shall be entitled to full participation in the assets of such association, and their value as thus determined shall be applied upon the indebtedness of such member.

If any such association is in process of involuntary liquidation, the minimum value of the shares owned by the borrowing member, after allowing for all possible losses and the expense of liquidation, may be applied in reduction of his indebtedness; and he shall be entitled to receive his proportionate share of any further sums that may be thereafter realized from the assets of such association.

Nothing in this section shall be construed to prevent the reduction of any such association's liability to its members in accordance with the provisions of section four hundred and four of this article.

Source.—Former § 221. In the first paragraph the words "and all sums advanced by the association for taxes, assessments, or insurance premiums, with interest thereon" are new. The second paragraph is new. In the fourth paragraph the words "a sum equal to the matured value of one or more of the instalment shares transferred," etc., have been substituted for the words "in sums of not less than one hundred dollars." The last three paragraphs are new.

DOES NOT AUTHORIZE REDEMPTION FEE.—This section does not authorize a provision in a by-law for a redemption fee in case of repayment before the maturity of the loan, such fees being forbidden by section 376, subd. 7. *Matter of Tuckahoe Home B. & L. Assoc.*, 81 Misc. 33.

§ 403. Change of location.

Any savings and loan association may make a written application to the superintendent of banks for leave to change its place of business to another place in the same county. The application shall state the reasons for such proposed change, and shall be signed and acknowledged by a majority of its board of directors. If the proposed place of business is within the limits of the town, village, borough or city in which the place of business of the association is located, such change may be made upon the written approval of the superintendent; if beyond such limits, notice of intention to make such application, signed by two principal officers of the association shall be published once a week for two successive weeks, immediately preceding such application in a newspaper published in the city of Albany in which notices by state officers are required by law to be published, and in a newspaper to be designated by the superintendent, published in the county in which the place of business of such association is located. If the superintendent shall issue a certificate authorizing the change of location, as provided in section fifty of this chapter, the association shall cause such certificate to be published once in each week for two successive weeks in the newspapers in which the notice of application was published. When the requirements of this section shall have been fully complied with, such association may, upon or after the day specified in the certificate, remove its property and effects to the location designated therein, and thereafter its place of business shall be the location so specified; and it shall have all the rights and powers in such new location which it possessed at its former location.

Source.—Former § 31. The section is identical with § 119 relating to banks. See the annotations to that section.

BRANCH OFFICES.—Under the former law the Attorney-General was of the opinion that a savings and loan association could not open a branch office. Atty.-Gen. Rep. (1900) 255. No power to open branch offices is given such associations by the present law.

§ 404. Reduction of liability to members.

Whenever the losses of any savings and loan association resulting from a depreciation in the value of its securities or otherwise exceed its guaranty fund and undivided profits so that the estimated value of its assets is less than the total amount due its

members, the supreme court may, upon the petition of such savings and loan association, approved by the superintendent of banks, order a reduction of its liability to its members, except upon juvenile savings shares, in such manner as to distribute the loss equitably among such members. If, thereafter, such savings and loan association shall realize from such assets a greater amount than was fixed in the order of reduction, such excess shall be divided among members whose credits were so reduced, but to the extent of such reduction only.

Source.—See former § 226. The language is practically new.

CROSS-REFERENCES.—For identical provision as to savings banks, see § 280; as to credit unions, see § 462.

CONSTITUTIONALITY QUESTIONED.—Where a savings and loan association filed a petition with the approval of the Superintendent, praying for an order reducing its liability to its members, and the only alternative to the granting of the order was the immediate winding up of the association, the Appellate Division, Second Department, without passing on its power under the statute granted the order experimentally, in view of the fact that such order, if extrajudicial, would not affect the rights of any members. Putnam, J., dissented on the ground that the action was unconstitutional because it attempted to put on the court nonjudicial functions. In *re Eagle Sav. & L. Assoc.*, 164 App. Div. 867.

§ 405. Qualifications and disqualification of directors.

The by-laws of every savings and loan association may prescribe other qualifications for directors, but no person shall be eligible to election as a director unless he is the owner in good faith and in his own right on the books of the association of five savings or instalment shares, or of other shares equal in value to one matured instalment share, and every person elected to be a director, who, after such election, shall hypothecate, pledge or cease to be the owner in his own right of the necessary qualifying shares, shall thereby vacate his office, and shall not be eligible for re-election as a director for a period of one year from the date of the next succeeding annual meeting.

Source.—The prescribed qualifications are from former § 213. The provisions relating to disqualifications are new.

CROSS-REFERENCES.—For similar provisions as to other corporations subject to the Banking Law, see § 123, and cross-references there given.

§ 406. Oath of directors.

Each director of any savings and loan association, when appointed or elected, shall take an oath that he will, so far as the duty devolves upon him, diligently and honestly administer the affairs of such association, and will not knowingly violate, or

willingly permit to be violated, any of the provisions of law applicable to such corporation, and that he is the owner in good faith and in his own right, of at least five savings or instalment shares, or of other shares equal in value to one matured instalment share either subscribed for by him or standing in his name on the books of the association. Such oath shall be subscribed by the director making it, certified by an officer authorized by law to administer oaths, and immediately transmitted to the superintendent of banks.

Source.—Former § 213, which also applied to officers. The present law contains no such provision as to officers.

CROSS-REFERENCES.—For similar provisions as to other corporations subject to the Banking Law, see § 124 and cross-references there given.

§ 407. Vacancies in board of directors; how filled.

All vacancies in the office of director of any savings and loan association shall be filled by election by the members except as hereinafter provided. Vacancies not exceeding one-third of the whole number of the board may be filled by the affirmative vote of a majority of the directors then in office, and the directors so elected may hold office until such vacancies are filled by the members at a special or annual election; or when the number of directors fixed by its by-laws is nine or more, two vacancies may, with the consent of the superintendent of banks, be left unfilled until the next annual election.

Source.—New.

CROSS-REFERENCES.—For similar provisions as to other corporations subject to the Banking Law, see § 126 and cross-references.

§ 408. Change of number of directors.

The members of any savings and loan association may at any time change the number of its directors by amending its by-laws in accordance with the provisions of section four hundred ten of this article.

Source.—New.

CROSS-REFERENCES.—For similar provisions as to other corporations subject to the Banking Law, see § 127 and cross-references there given.

§ 409. Restrictions on directors and officers.

No director, officer agent, clerk or employee of any savings and loan association shall receive compensation by salary, fees, expenses or otherwise for soliciting the sale of shares of the association to any person.

No officer, director, attorney, clerk or agent of such association, and no person in any way interested or concerned in the management of its affairs, shall discount or, directly or indirectly, purchase a share in any such association, whether filed for withdrawal or not, except by payment therefor of the withdrawal value of such share.

Source.—The first paragraph is from former § 227. The second paragraph is from former § 229.

§ 410. Amendment of by-laws; review of superintendent's refusal to approve by-laws.

1. The by-laws of any savings and loan association may be altered or amended from time to time, provided such alterations or amendments shall have first received the written approval of the superintendent of banks and shall thereafter have been duly adopted at a meeting of the shareholders, of which meeting thirty days' notice, containing a copy of the proposed alterations or amendments, shall have been given by mail to each shareholder of record; and a copy of such alterations and amendments shall have been filed in the office of the superintendent of banks within thirty days after such adoption.

2. Any association deeming itself aggrieved by the refusal of the superintendent of banks to give his written approval of proposed alterations or amendments of the by-laws, may, upon notice to the superintendent, apply to any justice of the supreme court of the district wherein the office of such association is located, for a review of such refusal. The court may review the superintendent's decision, upon such evidence as may be presented, and may affirm or reverse the same in whole or in part and may approve any or all of the proposed alterations or amendments. Any alteration or amendment approved by such court may be adopted by the association at a meeting of its shareholders and a copy thereof, if adopted, shall be filed in the office of the superintendent, as prescribed in subdivision one of this section.

Source.—Former § 211, subd. n, which only permitted alteration or amendment of by-laws in case the original by-laws so provided.

ADOPTION BY SHAREHOLDERS ESSENTIAL.—No amendment of the by-laws becomes effective until voted on by shareholders. Atty.-Gen. Rep. (1910) 849.

FILING AFTER LAPSE OF STATUTORY PERIOD.—It is within the administrative discretion of the superintendent to receive for filing amendments to the by-laws after the statutory period has elapsed. Amendments so received are validated so far as filing is concerned. *Atty.-Gen. Rep. (1912) 183.*

ARTICLES CONTAINING NO PROVISION FOR AMENDMENT.—If the articles as contained in the pass-book of a member contain no provision for amendment, amended articles subsequently adopted cannot be considered as binding upon such member by force of their adoption alone. *Krakowski v. North New York B. & L. Assoc., 7 Misc. 188.*

§ 411. Exemptions.

Every savings and loan association shall be deemed an institution for savings, and neither it nor its property shall be taxable under any law which shall exempt savings banks or institutions for savings from taxation. No law which taxes corporations in any form, or the shares or property thereof, shall apply to savings and loan associations unless they are specifically named in such law. The shares held by members of any association and the dues and dividends credited thereon shall be exempt from sale on execution and proceedings supplementary thereto to the amount of six hundred dollars, and the members of any such association shall not be individually liable for the payment of its debts. The shares of savings and loan associations shall not be subject to the stock transfer tax either when issued by the association or when transferred from one member to another.

Source.—Former § 230.

CROSS-REFERENCES.—Similar provisions as to credit unions, see §§ 461, 474.

§ 412. Communications from banking department must be submitted to directors and noted in minutes.

Each official communication directed by the superintendent of banks or one of his deputies to a savings and loan association or to any officer thereof, relating to an investigation or examination conducted by the banking department or containing suggestions or recommendations as to the conduct of the business of the association, shall be submitted, by the officer receiving it, to the board of directors at the next meeting of such board and noted in the minutes of the meetings of such board.

Source.—Former § 41. The section is identical with § 132 relating to banks. See the annotations to that section.

§ 413. Reports to superintendent; penalty for failure to make.

On or before the first day of February in each year, every savings and loan association shall make a written report to the superintendent of banks which shall contain a statement of its condition on the morning of the first day of January in said year. Every such report shall be verified by the oaths of the two principal officers in charge of the affairs of the association at the time of such verification. The verification shall state that the report is true and correct in all respects to the best of the knowledge and belief of the persons verifying it, and that the usual business of the association has been transacted at the location required by this article and not elsewhere.

Every such association shall also make such other special reports to the superintendent as he may from time to time require, which shall be in such form and filed at such date as may be prescribed by the superintendent and shall, if required by him, be verified in such manner as he may prescribe.

If any such association shall fail to make any report required by this section on or before the day designated for the making thereof, or shall fail to include therein any matter required by the superintendent, such association shall forfeit to the people of the state the sum of ten dollars for every day that such report shall be delayed or withheld, and for every day that it shall fail to report any such omitted matter, unless the time therefor shall have been extended by the superintendent as provided by section forty-nine of this chapter.

Source.—Former § 21. The provision as to special reports is new.

CROSS-REFERENCES.—Powers and duties of superintendent with regard to reports, see §§ 42, 43.

Similar provisions as to other persons and corporations subject to the Banking Law, see § 133 and cross-references there given.

§ 414. Preference of deposits made by savings and loan associations.

All the property of any bank or trust company which shall become insolvent, shall be applied by the trustees, assignees or receivers thereof, or by the superintendent of banks, if such insolvent bank or trust company is being liquidated by him under the provisions of section fifty-seven of this chapter, in the first place

ratably and proportionately to the payment in full of any sum or sums of money deposited therewith by any savings bank, savings and loan association or credit union, but not to an amount exceeding that authorized to be so deposited by the provisions of this chapter, and subject to any other preference provided for in the charter of any such bank or trust company.

Source.—Former §§ 159, 231.

CROSS-REFERENCES.—Other priorities under the Banking Law, see § 78 and cross-references there given.

Similar provision as to deposits by savings banks, see § 278, by the land bank, see § 437; by credit unions, see § 456.

§ 415. Annual report to shareholders.

Every savings and loan association shall prepare and publish annually and deliver to each shareholder on application a complete statement of its financial condition including the receipts and disbursements since its last previous statement.

Source.—Former § 224.

§ 416. Construction of reference to laws of eighteen hundred and ninety-two.

Whenever reference is made prior to May thirty-first, eighteen hundred ninety-eight, in any of the statutes of the state of New York to article five or six or to articles five and six of chapter six hundred eighty-nine of the laws of eighteen hundred ninety-two, such references shall be construed to refer to article ten of this chapter.

Source.—Former § 239, which was from Laws of 1894, ch. 705, § 1.

The Banking Law as originally passed, ch. 689 of 1892, contained Art. V, Building and Mutual Loan Corporations, §§ 170–175, and Art. VI, Co-operative Loan Associations, §§ 180–191.

The original law was ch. 122 of 1851; this was amended by ch. 564 of 1875 and ch. 96 of 1878, and was re-enacted into the original Art. V, §§ 170–175.

Chapter 556 of 1887 provided for the formation of co-operative savings and loan associations, §§ 180–191.

These articles were consolidated by ch. 705 of 1894 into the Art. V, former Banking Law, Co-operative Savings and Loan Associations, former §§ 170–195b, now Art. X, herein.

§ 417. Rights of certain associations preserved.

The repeal of chapter one hundred twenty-two of the laws of eighteen hundred fifty-one, chapter five hundred sixty-four of the laws of eighteen hundred seventy-five, chapter ninety-six of the laws of eighteen hundred seventy-eight, and chapter five hundred fifty-six of the laws of eighteen hundred eighty-seven, article five of chapter six hundred eighty-nine of the laws of eighteen hundred ninety-two, article six of chapter six hundred eighty-nine of the laws of eighteen hundred ninety-two as originally enacted, and article six of chapter ten of the laws of nineteen hundred nine, shall not affect the corporate existence of associations organized under any of such acts, and every association organized under the provisions of any of such statutes shall be subject to the provisions of this chapter, in like manner as corporations which are incorporated hereunder.

Source.—Former § 232.

PURPOSE OF ACT.—This act “seems to have been designed to provide a uniform and consistent statutory system for the control of such corporations, and to that end repealed the prior acts, which had been somewhat various.” Matter of Tuckahoe Home B. & L. Assoc., 81 Misc. 33, 35.

§ 418. Charters to be conformed to this article; obligations and rights unimpaired.

The powers, rights, duties, privileges and obligations of every association organized under any of the acts enumerated in section four hundred seventeen of this chapter or doing business under any of such acts at the time this act takes effect, shall be governed, controlled, construed, extended, limited and determined by the provisions of this chapter, to the same extent and effect as if such association had been organized or incorporated under or pursuant to the provisions hereof, and the articles of association, certificate of incorporation, by-laws or rules of every such association heretofore made or existing, are hereby modified, altered and amended to conform to the provisions of this chapter, and the same are declared void where such articles of association, certificate of incorporation, by-laws or rules are inconsistent with the provisions of this chapter; except that the obligations of any existing association, whether between such association and its shareholders or any one of them, or any other person or persons, or any valid contract between the shareholders of any such association, ex-

isting at the time this act takes effect, shall not be in any wise impaired by the provisions of this act; and with such exceptions every such savings and loan association shall possess the powers, rights, duties and privileges, and be subject to the obligations, restrictions and liabilities conferred and imposed by this chapter, notwithstanding anything to the contrary in its articles of association, certificate of incorporation, by-laws or rules. All obligations to any such association heretofore contracted shall be enforceable by it and in its name, and demands, claims and rights of action against any such association may be enforced against it as fully and completely as they might have been enforced heretofore.

Source.—Former § 233.

EFFECT OF SECTION.—The effect of this section is to render void all inconsistent by-laws, but the provision that existing by-laws “are hereby modified, altered and amended to conform to the provisions of this chapter” is not self-executing. No amendment of the by-laws becomes operative until voted on by the shareholders, as provided for by § 410. Atty.-Gen. Rep. (1910) 849.

WHAT ASSOCIATIONS INCLUDED.—All building and loan associations incorporated under the Laws of 1851, ch. 122, are within the provisions of this article. Atty.-Gen. Rep. (1911) vol. 2, p. 118.

WHAT AMENDED CERTIFICATE MAY INCLUDE.—Opinion that an amended certificate of incorporation of a building and loan association may contain any provision for the regulation of its business and the conduct of the corporate affairs, and any limitation upon its powers or those of its directors and stockholders which does not exempt them from the performance of any obligation or duty imposed by law. Atty.-Gen. Rep. (1902) 186.

§ 419. Construction of term “by-laws.”

Wherever the word “by-laws” is used in this article, it shall be construed to refer to and include the provisions of all articles of association, certificates of incorporation, by-laws and rules of all corporations organized under any of the repealed acts enumerated in section four hundred seventeen of this article.

Source.—Former § 237.

§ 420. Foreign corporations prohibited from transacting a savings and loan business in the state.

No foreign corporation shall transact the business of a savings and loan association within this state or maintain an office in the state for the purpose of transacting such business.

Source.—New.

§ 421. Land Bank of the State of New York; incorporation; organization certificate.

When authorized by the superintendent of banks as provided in section twenty-three of this chapter, ten or more savings and loan associations, the aggregate resources of which shall not be less than five million dollars, may form the Land Bank of the State of New York. Each of such associations shall subscribe, acknowledge and submit to the superintendent of banks at his office an organization certificate in duplicate which shall specifically state:

1. The name, "Land Bank of the State of New York."
2. The place in the city of New York where its business is to be transacted.
3. The number of shares for which each association has subscribed which shall amount in the aggregate to not less than one hundred thousand dollars.
4. The number of directors of such land bank, which shall not be less than nine, and the names of the persons who shall be its directors until the first annual meeting. The certificate shall recite that the directors possess the qualifications specified in section four hundred thirty of this article.
5. The name and location of the business office of each savings and loan association subscribing the certificate and the aggregate resources of each such association.

Source.—This and the succeeding sections to § 438, inclusive, are new. Most of them, however, are drafted in conformity to similar provisions of the Banking Law applicable to other corporations.

The institution here provided for is modeled upon the "Landschaften" which originated in Germany about one hundred and fifty years ago. The main object of its creation is to mobilize rural credits so that they may be readily marketable in financial centres. The German paternalistic features have been omitted, however, and the functions of the state have been limited to acting merely as a depository of securities against which debentures are issued, and as a supervisor of its transactions. The conditions under which debentures may be issued, and the securities and obligations underlying such debentures make them an investment for which, ultimately, a wide field may be created in this country. See articles by Robert Franz and Dr. J. Hermes in vol. 22 of Senate Documents, 61st Congress, 2d session (Report of National Monetary Commission).

CROSS-REFERENCES.—Definition of "Land Bank of the State of New York," see § 2.

Powers and duties of superintendent with respect to incorporation, see §§ 21-24.

Similar provisions as to other persons and corporations seeking to engage in business under the Banking Law, see § 100 and cross-references there given.

§ 422. Proposed by-laws.

The incorporators shall subscribe and acknowledge and submit to the superintendent of banks at his office proposed by-laws in duplicate, which shall prescribe the manner in which the business of such land bank shall be conducted with reference to the following matters:

1. The date during the month of January of the annual meeting of shareholders; the manner of calling special meetings, and the number of members which shall constitute a quorum.

2. The number and qualifications of directors, subject to the provisions of section four hundred thirty of this article; the method of division into classes for the purpose of electing, as nearly as may be, an equal number of directors each year; the removal or suspension of directors; the filling of vacancies in the board of directors, and the number of directors which shall constitute a quorum, which shall not be less than five.

3. The meetings, powers and duties of directors; the appointment or election of appraisal, supervisory and auditing committees.

4. The officers; the manner of their election; their terms of office, duties and compensation; and the bonds which shall be required of officers who have the custody or possession of money, securities or property of the land bank.

5. The annual commission that may be charged each member, subject to the limitations of section four hundred twenty-nine of this article.

6. The transfer of membership, subject to the limitations of section four hundred twenty-eight of this article.

7. The manner in which the by-laws may be altered or amended.

Source.—New. Follows closely the provisions relating to proposed by-laws of savings and loan associations in § 376.

CROSS-REFERENCES.—Amendment of by-laws, see § 435.

§ 423. When corporate existence begins; conditions precedent to commencing business.

When the superintendent shall have endorsed his approval on the organization certificate as provided by section twenty-three of this chapter, the corporate existence of the land bank of the state of New York shall begin and it shall then have power to elect officers and transact such other business as relates to its organization; but such land bank shall transact no other business until

1. Subscriptions to its shares aggregating one hundred thousand dollars shall have been paid in cash and an affidavit stating that such subscriptions have been so paid, subscribed and sworn to by its two principal officers, shall have been filed in the clerk's office of the county of New York, and a certified copy thereof in the office of the superintendent.

2. The superintendent shall have duly issued to it the authorization certificate specified in section twenty-four of this chapter.

Source.—New.

CROSS-REFERENCES.—Similar provisions as to other corporations organized under the Banking Law, see § 103 and cross-references there given.

Forfeiture of corporate rights by not commencing business, see § 485.

§ 424. General powers.

In addition to the powers conferred by the general corporation law the land bank of the state of New York shall, subject to the restrictions and limitations contained in this article and its by-laws, have the following powers:

1. To issue, sell and redeem bonds and notes secured by bonds and first mortgages made to or held by member associations.

2. To receive money or property from its members and from other associations, corporations and persons with whom it has contracts, engagements or undertakings, in instalments or otherwise; to enter into any contract, engagement or undertaking with such associations, corporations, or persons, or the withdrawal of such money or property, with any increase thereof, or for the payment to them or to any association, corporation or person, of any sum of money, at any time, either fixed or uncertain; to lend money to savings and loan associations upon the security of their promissory notes with or without collateral.

3. To invest its capital and other funds in bonds secured by first mortgages of real estate situated within the territory in which its members are authorized to make loans; and in securities which are authorized as investments for savings banks by section two hundred and thirty-nine of this chapter.

4. To receive by assignment from its members and to deposit in trust with the comptroller of the state of New York to be held by him as security for its and their outstanding obligations any first mortgages of real estate and the bonds secured thereby that are legally receivable by savings and loan associations; to empower such savings and loan associations as agents of the land bank, to collect and immediately pay over to the land bank the dues, interest and other sums payable under the terms, conditions and covenants of the bonds and mortgages; to return to, or permit such savings and loan associations to retain any sums of money so collected in excess of the amount required to meet the obligations of such associations respectively.

5. To purchase in its own name, hold and convey real property for the following purposes and no others:

(a) A plot whereon there is or may be erected a building suitable for the convenient transaction of its business from portions of which not required for its own use a revenue may be derived.

(b) Such as shall be mortgaged to it in good faith, by way of security for loans made by it or moneys due to it.

(c) Such as shall be conveyed to it for debts previously contracted in the course of its business, and such as it shall purchase at sales under judgments, decrees or mortgages held by it.

6. To designate as depositaries of its funds any bank, trust company, or savings bank of this state, or any national banking association located in this state doing a banking business under the laws of the United States.

Source.—New. Subdivision 5 is a provision common to several other classes of corporations subject to the Banking Law. See § 106, subd. 6, relating to banks; § 239, subd. 9, relating to savings banks; § 384, subd. 2, relating to savings and loan associations.

Amended by L. 1916, chap. 139. In effect April 6, 1916.

CROSS-REFERENCES.—For restrictions on powers, see § 425.

§ 425. Restrictions upon the powers of the land bank.

The land bank shall not:

1. Do a general deposit business.

2. Invest its capital and other funds in bonds secured by first mortgages on real estate if the amount secured by any such mortgage is in excess of sixty per centum of the appraised value of such real estate, or receive from its members bonds and mortgages on farm lands if the amount secured by any such mortgage is in excess of seventy-five per centum of the appraised value of such real estate.

3. Invest more than twenty-five per centum of its surplus in real estate occupied, or to be occupied, by it for office purposes, without the written approval of the superintendent of banks.

4. Incur any indebtedness upon notes and bonds in excess of twenty times the amount of its capital, nor issue bonds on behalf of any of its members in excess of twenty times the amount of the shares of such capital held by such member or in excess of eighty per centum of the value of the collateral security pledged therefor to such land bank.

Source.—New.

§ 426. Issuing of bonds.

Bonds shall be issued in series of not less than fifty thousand dollars. All bonds issued by the land bank may be called on any interest day at one hundred and two and one-half per centum and interest by giving notice of not less than sixty days in a newspaper published in the city of New York. Any member association which is not indebted for borrowed money and has made no investments upon the security of real estate or taken title to real estate upon which there are prior mortgages, liens or encumbrances may pledge seventy-five per centum of its mortgages with the bonds secured thereby, to the land bank, as collateral security for bonds issued on its behalf. Whenever such obligations do not exceed ten per centum of the accumulated capital of the association, fifty per centum of such mortgage securities may be pledged to the land bank; and when such obligations exceed ten per centum of such capital, twenty-five per centum of such mortgage securities may be so pledged. Whenever all the members of a member association shall execute and deliver to such association bonds secured by

first mortgages of real estate and shall each give his collateral bond to such member association guaranteeing the payment of the bonds and mortgages of all the other members, one hundred per centum of the mortgage securities of such association and the bonds secured thereby may be pledged by such association to the land bank.

The amortization payments upon all mortgages accepted by the land bank as collateral security for bonds shall be sufficient to liquidate the debt in a period not exceeding forty years. In the event of any default for more than ninety days in the payment of the principal of, or for more than ninety days in the payment of any instalment of interest upon, any of said bonds, the superintendent of banks may, of his own motion, and shall, upon the request in writing of the holders of said bonds in default to the amount of fifty thousand dollars, forthwith take possession of and proceed to liquidate the land bank. Upon such liquidation he shall be entitled in the name of the land bank to enforce all of its rights and securities and to collect and realize upon all of its assets, including all mortgages assigned to the said land bank by the several member associations, and deposited with the comptroller of the state of New York, up to the amounts advanced by the land bank to the several member associations thereon. Upon any such liquidation all said bonds then issued and outstanding shall forthwith become due and payable equally and ratably out of all the assets of said land bank in advance of any other debts thereof not specifically preferred by law.

Source.—New.

Amended by L. 1916, chap. 139. In effect April 6, 1916.

CROSS-REFERENCES.—For general powers of savings and loan associations, see § 378.

§ 427. Guaranty fund.

The land bank shall accumulate from its profits a guaranty fund by carrying thereto annually a sum equal to one-half of one per centum of its capital, until such guaranty fund shall be equal to at least fifteen per centum of such capital.

Source.—New.

CROSS-REFERENCES.—Definition of "guaranty fund," see § 3.

Provisions as to guaranty funds of savings banks, see § 252; of savings and loan associations, see § 392; of credit unions, see § 457.

§ 428. Membership; liability; transfer of shares.

Every member shall pay one thousand dollars for each share of the capital of the land bank issued to it, provided that no association shall subscribe for or hold shares of such capital to an amount in excess of ten per centum of the resources of such association.

Every such member shall be individually responsible, equally and ratably, and not one for another, for all contracts, debts, and engagements of the land bank, to the extent of the amount of its shares therein at the par value of one thousand dollars each, in addition to the amount invested in such shares. Such shares shall not be transferable, except that a member, which is not liable to the land bank for any obligation direct or contingent, may transfer its shares therein to another savings and loan association, by and with the consent of the board of directors of the land bank; or it may retire from membership and receive back such sums as it has paid for its shares, upon giving one year's notice in writing of such intention, provided, however, that no withdrawal shall be permitted by the board of directors, which will reduce the total amount of the capital of the land bank below one hundred thousand dollars.

Source.—New.

CROSS-REFERENCES.—Liability of stockholders of banks, see § 120; of trust companies, see § 206; of safe-deposit companies, see § 322.

§ 429. Commissions and payment of expenses.

The land bank may charge each member an annual commission, not to exceed one-half of one per centum, upon the outstanding debenture bonds issued in its behalf, provided, however, that the rate of commission in any year shall be the same on all outstanding bonds; or in lieu of charging such commission the expenses incurred on account of any debenture bond issue may be charged to the association on whose behalf such bonds are issued, and the general expenses of the land bank assessed against the members in proportion to the bonds issued for them.

Source.—New.

§ 430. Qualifications and disqualifications of directors; bond.

At least three-fourths of the directors of the land bank must reside in the state of New York during their term of office, and

all must be citizens of the United States. No person shall be elected a director unless he is a shareholder of a member association and has been nominated by it for that office; and every person elected to be a director who, after such election, shall cease to be a shareholder of a member association, shall cease to be a director of the land bank, and his office shall be vacant. Directors who have the custody or possession of money, securities or property shall give bond to the land bank in an amount commensurate with their liability.

Source.—New.

CROSS-REFERENCES.—Qualifications and disqualifications of directors of other corporations subject to the Banking Law, see § 123, and cross-references there given.

§ 431. Oath of directors.

Each director, when appointed or elected, shall take an oath that he will, so far as the duty devolves upon him, diligently and honestly administer the affairs of the land bank, and will not knowingly violate, or willingly permit to be violated, any of the provisions of law applicable to such corporation and that he is the owner in good faith and in his own right on the books of the association which nominated him of five savings or instalment shares, or other shares of the value of one matured share, and that the same is not hypothecated, or in any way pledged as security for any loan or debt and, in case of re-election that such share was not hypothecated or in any way pledged as security for any loan or debt during his previous term. Such oath shall be subscribed by the directors and officers making it, and certified by an officer authorized by law to administer oaths, and immediately transmitted to the superintendent of banks.

Source.—New. Modeled upon § 406 relating to oath of directors of savings and loan associations.

CROSS-REFERENCES.—Similar provisions as to other corporations subject to the Banking Law, see § 124 and cross-references there given.

§ 432. Vacancies in board of directors.

All vacancies in the office of director shall be filled by election by the members except as provided in this section. Vacancies not exceeding one-third of the whole number of the board may be filled by the affirmative vote of a majority of the directors then in office,

and the directors so elected may hold office until such vacancies are filled by the members at a special or annual election; or when the number of directors required is nine or more, two vacancies may, with the consent of the superintendent of banks, be left unfilled until the next annual election.

Source.—New. See § 407.

CROSS-REFERENCES.—Similar provisions as to other corporations subject to the Banking Law, see § 126 and cross-references there given.

§ 433. Change of number of directors.

The members of the land bank may at any time change the number of its directors by amending its by-laws in accordance with the provisions of section four hundred thirty-five of this article.

Source.—New. See § 408.

CROSS-REFERENCES.—Similar provisions as to other corporations subject to the Banking Law, see § 127 and cross-references there given.

§ 434. Officers; powers, duties and compensation.

The by-laws of the land bank shall specify its officers, the manner of their election, and their terms of office.

The officers who have the custody or possession of money, securities, or property shall give bond to the association as provided in the by-laws. They shall receive such compensation as is prescribed in the by-laws and shall hold office until their successors are elected and have qualified.

Source.—New.

§ 435. Amendment of by-laws.

The by-laws may be altered or amended, from time to time, provided such alterations or amendments shall have first received the written approval of the superintendent of banks and shall thereafter have been duly adopted at a meeting of the directors.

Source.—New.

CROSS-REFERENCES.—Amendment of by-laws of savings and loan association, see § 410; of credit union, see § 473.

§ 436. Annual meeting; notice; voting.

The annual meeting of the land bank, for the election of directors, shall be held at its principal place of business in January in each year. Notice of the time and place of holding such election shall be given by publication thereof, at least once in each

week for two successive weeks immediately preceding such election, in a newspaper published in the city of New York and by mailing a copy of such notice postage prepaid to each shareholder of the land bank ten days before the holding of such meeting. Each member shall be entitled to one vote for every share of the capital standing in its name on the books of the land bank.

Source.— New.

CROSS-REFERENCES.— Similar provisions as to other corporations subject to the Banking Law, see § 122 and cross-references there given.

§ 437. Preference of credits.

All the property of any bank, trust company or savings and loan association which shall become insolvent shall be applied by the trustees, assignees or receivers thereof or by the superintendent of banks in the first place to the payment in full of any sum or sums of money deposited therewith by the land bank or due to the land bank for subscriptions, sinking funds, interest and principal of bonds, or guaranty of mortgages, ratably and proportionately but not to an amount exceeding that authorized to be so deposited or contracted by the provisions of this chapter, and in accordance and on an equality with any other preference provided for in this chapter.

Source.— New.

CROSS-REFERENCES.— As to other priorities created by the Banking Law, see § 78 and cross-references there given.

Similar preference to deposits by savings banks, see § 278; by savings and loan associations, see § 414; by credit unions, see § 456.

§ 438. Land bank and its debentures not liable for taxation.

The debentures issued by the land bank and the land bank itself, together with its capital, accumulations and funds, shall have the same exemption from taxation as other institutions for savings. No law which taxes corporations in any form, or the shares thereof, or the accumulations therein, shall be deemed to include the land bank or its issues of debenture bonds unless they are specifically named in such law.

Source.— New.

CROSS-REFERENCES.— Similar provision as to savings and loan associations, see § 411; as to credit unions, see § 474.

ARTICLE XI.**Credit Unions.****Section 450. Incorporation; organization certificate.**

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§ 450. Incorporation; organization certificate.

When authorized by the superintendent of banks as provided in section twenty-three of this chapter, seven or more persons employed or residing in the state of New York may form a corporation to be known as a credit union. Such persons shall subscribe and acknowledge and submit to the superintendent of banks at his office an organization certificate in duplicate which shall specifically state:

1. The name of the corporation which shall include the words "credit union."

2. The place where its business is to be transacted. If the condition of membership is employment of its members by a certain individual, partnership or corporation, the place of business of such individual, partnership or corporation may be stated as the place of business of such credit union.

3. The par value of the shares, which shall not exceed twenty-five dollars.

4. The full name, residence and post-office address of each of the incorporators and the number of shares subscribed for by each.

5. The term of its existence, which may be perpetual.

6. The number of its directors which shall not be less than five, and the names and addresses of the incorporators who shall be its directors until the first annual meeting of shareholders.

Source.—Former § 331. The former article (Laws 1913, ch. 582) became effective May 17, 1913, but no corporations were organized under it.

The credit union is the simplest form of co-operative credit organization. Owing to the elasticity of its by-laws, it is readily adaptable to the conditions of its membership. Its functions are confined to lending its capital and deposits to members, and depositing in banking institutions funds not yet employed.

CROSS-REFERENCES.—Definition of credit union, see § 2.

Powers and duties of superintendent with respect to incorporation, see §§ 21-24.

Similar provisions as to other corporations seeking to engage in business under the Banking Law, see § 100 and cross-references there given.

As to qualifications of incorporators, see Gen. Corp. Law, § 4, post; corporate names, id., § 6, post; amended and supplemental certificates, id., § 7, post; extension of corporate existence, id., § 37, post.

§ 451. Proposed by-laws.

The incorporators shall subscribe and acknowledge and submit to the superintendent of banks at his office proposed by-laws, in duplicate, which shall prescribe the manner in which the business of the credit union shall be conducted with reference to the following matters:

1. The purposes of the corporation.

2. The qualifications for membership.

3. The date during the month of January of the annual meeting; the manner of conducting meetings; the method by which members shall be notified of meetings, and the number of members which shall constitute a quorum.

4. The number of directors necessary to constitute a quorum, and the compensation and duties of officers elected by the directors.

5. The powers and duties of the credit committee and the number of members, not less than three, of which it shall be composed.

6. The powers and duties of the supervisory committee and the number of members, not less than three, of which it shall be composed.

7. The conditions upon which shares may be issued, paid for, transferred and withdrawn.

8. The fines, if any, which shall be charged for failure punctually to meet obligations to the corporation.

9. The conditions upon which deposits may be received and withdrawn.

10. The manner in which the funds of the corporation shall be employed.

11. The conditions upon which loans may be made and repaid.

12. The maximum rate of interest that may be charged upon loans.

13. The method of receipting for money paid on account of shares, deposits or loans.

14. The manner in which the guaranty fund shall be accumulated.

15. The manner in which dividends shall be determined and paid to members.

16. Whether the members shall be equally and ratably liable for the payment of the debts of the corporation.

Source.—Former § 331.

CROSS-REFERENCES.—Amendment of by-laws, see § 473.

Powers of credit union, see § 453.

Limitations on powers, see § 454.

Annual meetings, see § 464.

Directors, see §§ 450, 454, 465-469.

Officers, see §§ 466, 472.

Credit committee, see §§ 454, 466, 470.

Supervisory committee, see §§ 454, 466, 471.

Shares, see §§ 450, 453, 454.

Fines, see §§ 453, 454.

Deposits by members, see § 453.

Employment of funds, see §§ 453, 456.

Loans to members, see §§ 453, 454, 478.

Guaranty fund, see § 457.

Dividends, see §§ 458, 459.

Individual liability of members, see § 461.

§ 452. When corporate existence begins; conditions precedent to commencing business.

When the superintendent of banks shall have endorsed his approval on the organization certificate, as provided by section twenty-three of this chapter, the corporate existence of the credit union shall begin, and it shall then have power to elect officers and to transact such other business as relates to its organization. But it shall transact no other business, until the superintendent shall have duly issued to it the authorization certificate specified in section twenty-four of this chapter.

Source.—The provision as to when corporate existence shall begin is new. The requirement as to the authorization certificate comes from former § 32.

CROSS-REFERENCES.—Similar provisions as to other corporations engaging in business under the Banking Law, see § 193, and cross-references there given.

Forfeiture of corporate existence by not commencing business, see § 485.

§ 453. General powers.

In addition to the powers conferred by the general corporation law, a credit union shall, subject to the restrictions and limitations contained in this article and in its by-laws, have the following powers:

1. To issue shares to persons qualified for membership.
2. To charge an entrance fee to subscribers for such shares.
3. To charge a reasonable fee for the transfer of its shares.
4. To receive the savings of its members in payment of shares or on deposit.

5. To lend money to its members upon such terms and conditions as the by-laws provide and as the credit committee shall approve, at rates not exceeding one per centum per month, inclusive of all charges incident to the making of such loan.

6. To deposit any moneys received by it and not lent to members, as provided in section four hundred and fifty-six of this article.

7. To borrow money to an amount not exceeding forty per centum of the capital of such corporation, except where the capital is five thousand dollars or less, in which event such credit union may borrow any amount up to two thousand dollars.

8. To reduce its liability to shareholders as provided in section four hundred and sixty-two of this article.

9. To fine members for failure to meet punctually obligations to such credit union.

10. To expel members, as provided in section four hundred and sixty-three of this article.

11. To impress a lien upon the shares and dividends of any member to the extent of any loans made to him and for any dues or fines payable by him.

12. To cancel the shares of any member who withdraws or is expelled, and apply the withdrawal value thereof to the liquidation of such member's indebtedness to the corporation.

13. To hold shares in and make deposits with other credit unions.

14. To invest any moneys received by it and not lent to its members in the securities which are authorized as investments for savings banks by subdivisions one, two, three, four, five and seven of section two hundred and thirty-nine of this chapter.

Source.—The powers conferred by subdivisions 4, 5 and 6 were contained in former § 330. The others were scattered through the article.

Subdivision 14, added by L. 1915, ch. 294. In effect April 14, 1915.

CROSS-REFERENCES.—Powers of other corporations organized under the Banking Law, see § 106 and cross-references there given.

General powers of corporations, see Gen. Corp. Law, §§ 10, 11; acquisition of real property, id., §§ 13, 14.

General usury laws, see Gen. Bus. Law, §§ 370-382.

§ 454. Limitations upon powers.

No credit union shall:

1. Pay any commission or compensation for securing members or for the sale of its shares.
2. Make any loan in excess of fifty dollars unless security therefor is taken. The term "security" within the meaning of this subdivision shall include an endorsed note.
3. Impose a fine, in case of failure of a member to make payments on shares, exceeding two per centum per month or fraction of a month on amounts due, except that a minimum fine of five cents per month or fraction thereof may be imposed.
4. Permit any director, officer or member of the credit committee or supervisory committee to borrow directly or indirectly or become surety for any loan or advance made by the corporation, unless such loan shall have been approved at a regularly called meeting of the members of the corporation by a majority vote of those present, and the notice of such meeting shall have stated that the question of loans to directors, officers or members of committees would be considered at such meeting.
5. Issue shares or accept deposits in trust, except in the name of the trustee, as such, for a specified beneficiary whose residence shall be disclosed to the credit union by such trustee.
6. Issue any shares except to those qualified for membership under its by-laws, and unless there is printed upon the certificate or other evidence of such shares the words "transferable only to qualified members."
7. Lend to any of its members without requiring at the time of such loan a surrender and pledge of any certificates or other evidences of membership, issued by such credit union to the member to whom such loan is to be made.

Source.—New. In the former article the limitations on corporate powers were scattered.

§ 455. Capital.

The capital of a credit union shall consist of the payments made by members on shares, and unpaid dividends credited thereon.

Source.—Former § 340.

§ 456. Deposit of funds; preference.

The capital, deposits, undivided profits and guaranty fund of any credit union may be deposited in one or more savings banks, state banks or trust companies, incorporated under the laws of the state of New York, or in national banks located in the state. Funds deposited in a state bank or trust company shall, in the event of the liquidation of such depository, be entitled to priority of payment to the same extent as deposits of savings banks as provided in section two hundred and seventy-eight of this chapter.

Source.—Former § 342. Provision in former section permitting investment in savings bank securities has been eliminated as too complicated for this form of organization.

CROSS-REFERENCES.—For other priorities under the Banking Law, see § 78 and the cross-references there given.

Similar provision as to deposits by savings banks, see § 278; by savings and loan associations, see § 414; by the land bank, see § 437.

§ 457. Guaranty fund; how created and regulated.

Every credit union shall create a guaranty fund which shall in no case exceed the capital of the corporation, plus fifty per centum of its other liabilities, and which shall be held to meet contingencies until the corporation is dissolved, when it may be distributed among the shareholders.

Such guaranty fund shall be created and regulated as follows:

1. All entrance fees, transfer fees and fines remaining after the payment of organization expenses shall be set aside to such fund.

2. At the close of each fiscal year twenty-five per centum of the net earnings of the corporation for the year shall be carried to such fund, provided that, upon the recommendation of the board of directors, the shareholders, at the annual meeting, may increase or, if such fund equals or exceeds its capital, may decrease the proportion of net earnings to be thus set aside.

3. Any sums recovered on items previously charged to it shall be credited to such fund.

Losses incurred by a credit union may be charged to its guaranty fund.

Source.—Former § 349, which provided for a "reserve fund."

CROSS-REFERENCES.—Definition of guaranty fund, see § 3.

Guaranty fund of savings and loan associations, see § 392.

§ 458. Calculation to determine whether dividends may be declared and amount thereof.

On or after the date of the close of each fiscal year, in order to determine whether a dividend may be declared, and the amount thereof, the earnings from all sources, may be credited to the credit union's profit and loss account and the following items shall be charged against such account:

1. All expenses paid or incurred of whatever nature in the management of its affairs, the collection of its debts or the transaction of its business.

2. The interest paid, or accrued and unpaid, on debts owing by it.

3. All losses sustained by it in excess of its guaranty fund.

The credit balance of the profit and loss account as thus determined shall constitute the undivided profits of the credit union at the close of such period, and shall be applicable to the payment of dividends except as provided in the next succeeding section.

Source.— New.

CROSS-REFERENCES.— Definition of "undivided profits," see § 3.

Similar provisions as to savings and loan associations, see § 394.

§ 459. Dividends to shareholders; how often and from what payable; conditions precedent.

The directors of any credit union may, at the close of each fiscal year, declare such dividend from its undivided profits as they shall judge expedient. But no credit union shall declare, credit or pay any dividend to its shareholders until it shall have:

1. Made good any existing impairment of its capital.

2. Carried to its guaranty fund such part of its net earnings as is required by section four hundred fifty-seven of this article.

Only fully paid shares shall be entitled to dividends, and shares which shall have been fully paid during any year in which dividends were declared shall be entitled only to a proportionate part of such dividends calculated from the first day of the month following such payment in full.

Source.— Former § 348. The prohibition against payment of dividends when capital is impaired comes from former § 29.

CROSS-REFERENCES.— Definition of "undivided profits," see § 3.

Directors' liability for declaring unauthorized dividends, see Stock Corp. Law, § 28, post.

Criminal liability for paying dividends out of capital, see Penal Law, § 564, post.

§ 460. Change of location.

Any credit union may make a written application to the superintendent of banks for leave to change its place of business to another place in the same county. The application shall state the reasons for such proposed change, and shall be signed and acknowledged by a majority of its board of directors and accompanied by the written assent thereto of at least two-thirds of its shareholders. If the proposed place of business is within the limits of the village, borough or city, if in a city not divided into boroughs, in which the place of business of the credit union is located, such change may be made upon the written approval of the superintendent; if beyond such limits, notice of intention to make such application, signed by two principal officers of the credit union shall be published once a week for two successive weeks immediately preceding such application in a newspaper published in the city of Albany in which notices by state officers are required by law to be published, and in a newspaper to be designated by the superintendent, published in the county in which the present place of business of such credit union is located. If the superintendent shall grant his certificate authorizing the change of location, as provided in section fifty of this chapter, the credit union shall cause such certificate to be published once in each week for two successive weeks in the newspapers in which the notice of application was published. When the requirements of this section shall have been fully complied with, the credit union may, upon or after the day specified in the certificate, remove its property and effects to the location designated therein, and thereafter its place of business shall be the location so specified; and it shall have all the rights and powers in such new location which it possessed at its former location.

Source.—Former §§ 31, 356. This section is identical with § 119 relating to banks. See the annotations to that section.

§ 461. Exemptions and individual liability of shareholders.

The shares of members of any credit union and all the accumulations on such shares shall be exempt from sale on execution and proceedings supplementary thereto to the amount of six hundred dollars. The transfer of such shares shall not be taxable under the provisions of article twelve of the tax law.

Unless the by-laws so provide the shareholders of such a credit union shall not be individually liable for the payment of its debts.

Source.— Former § 357.

CROSS-REFERENCES.— Similar provision as to savings and loan associations, see § 411; as to land bank, see § 438.

§ 462. Reduction of liability to shareholders.

Whenever the losses of any such credit union resulting from a depreciation in the value of its securities or otherwise exceed its undivided profits and guaranty fund, so that the estimated value of its assets is less than the total amount due its shareholders, the board of directors may, with the written approval of the superintendent of banks, order a reduction of the liability to each of its shareholders, so as to divide the loss equitably among such shareholders. If thereafter the credit union shall realize from such assets a greater amount than was fixed in the order of reduction, such excess shall be divided among the shareholders whose assets were reduced, but to the extent of such reduction only.

Source.— Former § 333.

CROSS-REFERENCES.— For similar provision as to savings banks, see § 280; as to savings and loan associations, see § 404.

§ 463. Manner of withdrawal and expulsion of members; effect upon liabilities to credit union.

A member desiring to withdraw from a credit union shall file a written notice of his intention to withdraw. The board of directors may expel any member who has not carried out his engagements with the credit union, or who has been convicted of a criminal offense, or who neglects or refuses to comply with the provisions of this article, or of the by-laws, or who habitually neglects to pay his debts, or who becomes insolvent or bankrupt.

The members at any regularly called meeting may expel any member whose private life is a source of scandal. But no member shall be expelled until he has been informed in writing of the charges against him and shall have had reasonable opportunity to be heard.

Any member of a credit union who withdraws or is expelled shall not be relieved of any liability to the corporation. The amounts paid in on shares or deposited by such members, together with any dividends credited to their shares and any interest which has accrued on their deposits, shall be repaid to them in the order of their withdrawal or expulsion, as funds become available therefor, but the credit union may deduct from such payments any sums due it from such members.

Source.—Former §§ 345, 346.

§ 464. Meetings of shareholders; voting.

At all meetings of shareholders of every credit union each shareholder shall have one vote irrespective of the number of shares which he holds, and no shareholder may vote by proxy. At any annual or special meeting a decision of the board of directors may be overruled by a majority vote of all the shareholders.

1. Annual meeting. An annual meeting for the election of directors, a credit committee and a supervisory committee shall be held during the month of January upon such notice and at such time and place as the by-laws provide.

2. Special meetings. At the request of ten members, or by order of the directors or the supervisory committee, special meetings may be held, after notice to the members as provided in the by-laws.

Source.—Former § 335.

§ 465. Qualifications and disqualifications of directors.

Every director of a credit union shall be a shareholder in his own right; and every person elected to be a director, who, after such election, shall hypothecate, pledge or cease to be the owner in his own right of his qualifying share shall thereby vacate his office, and shall not be eligible for re-election as a director for a period of one year from the date of the next succeeding annual meeting.

Source.—Former § 336 as to qualification. The disqualification is new.

CROSS-REFERENCES.—Similar provisions as to other corporations subject to the Banking Law, see § 123 and cross-references there given.

§ 466. Oaths of directors, officers and members of committees.

Each director, officer and member of committee when appointed or elected, shall take an oath that he will, so far as the duty devolves upon him, diligently and honestly administer the affairs of the credit union, and will not knowingly violate, or willingly permit to be violated, any of the provisions of law applicable to such corporation, and that he is the owner in good faith and in his own right, of at least one share subscribed for by him or standing in his name on the books of the credit union and that the same is not hypothecated, or in any way pledged as security for any loan or debt, and, in case of re-election, that such share was not hypothecated, or in any way pledged as security for any loan or debt during his previous term. Such oath shall be subscribed by the directors, officers and members of committees making it, and certified by an officer authorized by law to administer oaths, and immediately transmitted to the superintendent of banks.

Source.—Former § 336.

CROSS-REFERENCES.—Similar provisions as to directors and trustees of other corporations subject to the Banking Law, see § 124 and cross-references there given.

§ 467. Tenure of office of directors.

The directors, unless sooner disqualified or removed, shall hold office until the next annual meeting of shareholders after their election and until their successors are elected and have qualified.

Source.—New. The section is identical with § 125 relating to banks. See the annotations to that section. Under former § 366, directors held office for term specified in by-laws.

§ 468. Powers and duties of directors; not entitled to compensation.

The board of directors of every credit union shall have the general management of the affairs, funds and records of the corporation. The directors shall hold an annual meeting within ten days after the annual meeting of shareholders for the purpose of elect-

ing a president, vice-president, secretary and treasurer of the corporation.

If the by-laws so provide the directors may elect the same person as secretary and treasurer.

No member of the board of directors shall receive any compensation for his services as a member of said board.

Whenever the directors shall deem any loan unsafe they may, in their discretion, require additional security to be given by the borrower, and if such security is not furnished as required by them, they may declare the loan due and take action to collect the same.

Source.—Former § 837.

CROSS-REFERENCES.—For special duties of directors, see § 469.

§ 469. Special duties of directors.

Unless the by-laws shall expressly reserve any or all of the following duties to the shareholders, it shall be the special duty of the directors:

1. To act upon all applications for membership and to expel members.
2. To fix the amount of surety bond required of each officer having the control or custody of funds.
3. To determine from time to time the rate of interest which shall be allowed on deposits and charged on loans.
4. To fix the maximum number of shares which may be held by, and the maximum amount which may be lent to any one member.
5. To declare dividends.
6. To recommend amendments to the by-laws.
7. To fill vacancies in the board of directors or in the credit committee.
8. To direct the deposit or investment of funds, except loans to members, and to perform such other duties as the by-laws may prescribe.

Source.—Former § 337. For general duties of directors, see § 468.

§ 470. Credit committee; duties.

The credit committee of every credit union shall meet as often as necessary, after due notice has been given to each member, for

the purpose of passing upon applications of members for loans and advances. Every such application must be made in writing and must state the purpose for which the loan is desired and the security offered. No loan shall be made unless the application has received the unanimous approval of the members of the committee present at the meeting, provided that a majority of the committee shall be present.

Any applicant for a loan may appeal from the decision of the credit committee to the board of directors.

In no case shall a member of the credit committee receive any compensation for his services as a member of such committee, or serve as a member of the supervisory committee.

If a credit union is located elsewhere than in a city, its board of directors may, if the by-laws so provide, act as its credit committee.

Source.—Former § 338.

§ 471. Supervisory committee; powers and duties.

The supervisory committee shall have power:

1. To suspend at any time by unanimous vote, at a meeting called for that purpose, the credit committee or any member of the board of directors or any officer.

2. By a majority vote to call a meeting of the shareholders to consider any violation of this article or the by-laws, or any practices of the credit union which, in the opinion of the committee, are unsafe or unauthorized.

It shall be the duty of the supervisory committee:

1. To inspect the securities, cash and accounts of the credit union and supervise the acts of its board of directors, officers and credit committee.

2. Within seven days after the suspension of the credit committee, to cause notice of a special meeting to be given to the shareholders to take such action regarding such suspension as may be deemed necessary.

3. To fill vacancies in the supervisory committee until the next annual meeting of the shareholders.

4. At the close of each fiscal year to make an audit of the books and records and an examination of the business and affairs of the credit union for the year and to make a full report of its

assets and liabilities, receipts and disbursements to the board of directors, and to cause such report to be read at the annual meeting of shareholders and filed with the records of such credit union.

In no case shall a member of the supervisory committee receive any compensation for his services as a member of such committee, or serve as a member of the credit committee.

Source.—Former § 339.

§ 472. Officers; powers, duties and compensation.

The powers, duties and compensation of the officers of any credit union shall be such as are prescribed in the by-laws.

Source.—Former §§ 331 and 344. Compensation was formerly fixed by "members."

§ 473. Amendment of by-laws; approval of superintendent of banks.

The by-laws of a credit union may be changed or amended by a three-fourths vote of the shareholders present at any meeting; provided the proposed change of amendment shall have first had the approval of the superintendent of banks; and provided further, that notice of such meeting, containing a true copy of the proposed change or amendment, shall have been given to each shareholder as prescribed in the by-laws. A copy of any change or amendment thus adopted shall be filed in the office of the superintendent of banks within thirty days after its adoption. Any credit union deeming itself aggrieved by the refusal of the superintendent of banks to give his approval to a proposed change or amendment, may apply to any justice of the supreme court of the district wherein the credit union is located, upon notice to the superintendent of banks, for a review of such decision. Such justice shall review the decision of the superintendent and may overrule or set aside the action of the superintendent and approve such change or amendment. An approval thus obtained shall enable such credit union to make the change or amendment as approved.

Source.—Former § 334, conformed to provisions of § 410 relating to amendment of by-laws of savings and loan associations.

CROSS-REFERENCES.—Discretion of superintendent, see § 48.

Similar provision as to savings and loan associations, see § 410.

§ 474. Credit union not liable for taxation.

Any credit union subject to the provisions of this article shall be deemed an institution for savings within the meaning of the law which exempts such institutions from taxation. No law which taxes corporations in any form, or the shares thereof or the accumulations therein, shall apply to corporations doing business in accordance with the provisions of this article, unless such corporations are specifically named in said law.

Source.— Former § 357.

CROSS-REFERENCES.— Similar provisions as to savings and loan associations, see § 411.

§ 475. Fiscal year.

The fiscal year of every credit union shall end at the close of business on the thirty-first day of December.

Source.— Former § 335.

§ 476. Communications from banking department must be submitted to directors and supervisory committee, and noted in minutes.

Each official communication directed by the superintendent of banks or one of his deputies to a credit union or to any officer thereof, relating to an investigation or examination conducted by the banking department or containing suggestions or recommendations as to the conduct of the business of the credit union, shall be submitted, by the officer receiving it, to the board of directors and to the supervisory committee at the next meeting of such board or committee and duly noted in the minutes of the meetings of such board, or committee.

Source.— Former § 41. The section is identical with § 132 relating to banks. See the annotations to that section.

§ 477. Reports to superintendent; penalty for failure to make.

On or before the first day of February in each year, every credit union shall make a written report to the superintendent of banks which shall contain a statement of its condition on the morning of

the first day of January in said year and shall be in the form and contain the matters prescribed by the superintendent. Every such report shall be verified by the oaths of the president, treasurer, secretary, and a majority of the members of the supervisory committee. The verification shall state that the report is true and correct in all respects to the best of the knowledge and belief of the persons verifying it, and that the usual business of the credit union has been transacted at the location required by this article and not elsewhere.

Every such credit union shall also make such other special reports to the superintendent as he may from time to time require, which shall be in such form and filed at such date as may be prescribed by the superintendent and shall, if required by him, be verified in such manner as he may prescribe.

If any such credit union shall fail to make any report required by this section on or before the day designated for the making thereof, or shall fail to include therein any matter required by the superintendent, such credit union shall forfeit to the people of the state the sum of five dollars for every day that such report shall be delayed or withheld, and for every day that it shall fail to report any such omitted matter, unless the time therefor shall have been extended by the superintendent as provided by section forty-nine of this chapter.

Source.—Former § 333.

CROSS-REFERENCES.—Powers and duties of superintendent with regard to reports, see §§ 42, 43.

For similar provisions as to other persons and corporations subject to the Banking Law, see § 133 and cross-references there given.

§ 478. Penalty for loans to nonmembers; recovery.

Any officer, director or member of a committee of a credit union who knowingly permits a loan to be made or participates in a loan to a nonmember of the corporation shall be guilty of a misdemeanor and shall be primarily liable to the corporation for the amount thus illegally loaned, and the illegality of such a loan shall be no defense in any action by the corporation to recover the amount lent.

Source.—Former § 352.

§ 479. Penalty for use of term "Credit Union."

The use by any person, partnership, association or corporation, other than those authorized as provided in this article, of any name or title which contains the two words "credit" and "union" shall be a misdemeanor.

Source.—Former § 332.

CROSS-REFERENCES.—As to corporate names generally, see Gen. Corp. Law, §§ 6, 60, post.

ARTICLE XII.

Forfeiture of Corporate Existence by Nonuser; Voluntary Dissolution and Merger of Corporations.

Section 485. Forfeiture by not beginning business.

486. Voluntary dissolution.

487. Merger, when authorized.

488. Merger agreement.

489. Submission of agreement to superintendent.

490. Submission to stockholders or shareholders.

491. Resubmission to trustees of savings bank.

492. Filing approved agreement.

493. When merger takes effect.

494. Effect of merger.

495. Issuance of new certificates of stock or shares.

496. Rights of dissenting stockholders or shareholders.

§ 485. Unless superintendent extends time, corporate rights forfeited if business not begun within six months.

Any corporation subject to the provisions of this chapter, which shall not commence business within six months after the date on which its authorization certificate is issued by the superintendent shall forfeit its rights and privileges as a corporation and its corporate powers shall cease and determine, unless the superintendent of banks shall have duly extended the time within which such business may be commenced as provided in section forty-nine of this chapter.

Source.—New. The only provision of this kind in the old law was in former § 136 which related solely to savings banks. That section required the corporation to begin business within one year after the filing of its authorization certificate.

CROSS-REFERENCES.—Time within which superintendent can issue authorization certificate, see § 24.

When corporate existence begins and conditions precedent to commencing business, see § 103 and the cross-references there given.

Forfeiture for non-user by corporations generally, see Gen. Corp. Law, § 36.

NO JUDICIAL PROCEEDING NECESSARY.—It would seem that, if a corporation forfeits its rights under this section, no judicial proceeding is necessary to determine the forfeiture. See Atty.-Gen. Rep. (1910) 837.

§ 486. Voluntary dissolution; when authorized; procedure.

The stockholders or shareholders of any solvent corporation subject to the provisions of this chapter, or the board of trustees of any solvent savings bank, may direct that such corporation be closed for the purpose of winding up its affairs. The proceedings to close and wind up such corporation or savings bank shall be as follows:

1. Except in the case of a savings bank, a meeting of its stockholders or shareholders shall be held upon not less than twenty days' written notice to each such stockholder or shareholder, served either personally or by mail, postage prepaid, directed to him at his last known post-office address, and containing a statement of the purpose for which such meeting is called. Proof by affidavit of due service of such notice shall be filed in the office of the corporation before or at the time of such meeting.

In the case of a savings bank, a meeting of its board of trustees shall be held upon a like notice of not less than twenty days, served upon each trustee in like manner as the notice herein prescribed to be given to stockholders and shareholders of other corporations. Proof by affidavit of due service of such notice shall be filed in the office of such savings bank before or at the time of such meeting.

2. At a meeting of stockholders or shareholders of any such corporation held as prescribed in subdivision one of this section such stockholders or shareholders may, by a vote of the owners of at least two-thirds in amount of the entire capital stock or shares of such corporation, direct that the corporation be closed and its business wound up. The proceedings of such meeting shall be entered in the minutes of such corporation.

In the case of a savings bank, the board of trustees at its meeting held as prescribed in subdivision one of this section, may by an affirmative vote of not less than two-thirds of its whole number, declare by resolution its determination to close and wind up the business of such savings bank. The vote on such resolution shall be taken by ayes and nays and recorded with the resolution in the minutes of the board of trustees.

A copy of the minutes of the proceedings of such meeting of stockholders or shareholders or board of trustees, verified by the president and secretary of the meeting, shall be filed in the office of the superintendent within two days after the date of any such meeting.

3. Within three months after the date of any such meeting of stockholders, shareholders or trustees, application may be made to the supreme court, after due notice to the superintendent, for an order declaring the business of such corporation closed. In a proper case the court shall make such order which shall prescribe the notice to be given to creditors and depositors to present their claims to the corporation for payment. Within five days after the making of such order, a certified copy thereof shall be filed in the office of the superintendent. Upon the entry of such order such corporation shall cease to do business, and shall wind up its affairs, pay its creditors and depositors, if any, and, except in the case of a savings bank, distribute its assets among its stockholders or shareholders.

4. When such corporation shall have given the notice prescribed in such order to creditors and depositors to present their claims, and shall have paid the amounts due to all depositors and other creditors who have presented their claims or whose residence has been ascertained, it shall, before applying to court for a release upon final accounting or for a final order of dissolution, make a verified transcript or statement from its books of the names of all depositors, creditors, stockholders or shareholders who have not claimed or have not received the deposits, debts, dividends or interest balances due them, and shall file such transcript or statement, together with all identifying information, with the superintendent of banks and shall pay over such unclaimed amounts to the superintendent of banks as trustee for the persons entitled to receive them.

5. Upon the petition of such corporation showing that all its debts and obligations have been discharged except those for which no legal claimant has been found, and that such unclaimed amounts have been paid over to the superintendent and that more than one year has elapsed since the notice was given to creditors and depositors to present their claims as prescribed by the court, and on notice to the attorney-general and superintendent of banks and such further notice as the court may prescribe, the court may, on such terms as justice requires, make an order affirming such disposition of such unclaimed deposits, debts, dividends or interest and declaring such corporation dissolved and its corporate existence terminated.

6. On filing with the superintendent of banks, a certified copy of the order of dissolution described in the last preceding subdivision of this section, the corporation shall cease to exist.

Source.—Former §§ 99, relating to banks, 162-164, relating to savings banks, 199, relating to trust companies, 234-236, relating to savings and loan associations, and 350, relating to credit unions.

CROSS-REFERENCES.—Powers and duties of superintendent with respect to unclaimed deposits, dividends or interest, see §§ 45-47.

As to proceedings for voluntary dissolution of corporations generally, see Gen. Corp. Law, §§ 170-195.

THE DIRECTORS HAVE NO POWER TO DETERMINE that the corporation shall go into voluntary liquidation, and an agreement made by them to that effect is not binding on the stockholders. *Assets Realization Co. v. Howard*, 70 Misc. 651, affirmed 152 App. Div. 900, aff'd 211 N. Y. 430.

NOT REQUIRED TO MAKE REPORTS.—Where a bank is in process of liquidation under this section the superintendent cannot require it to make reports to him. *Atty.-Gen. Rep.* (1906) 499.

AFTER THE SUPERINTENDENT HAS TAKEN POSSESSION, the directors have no power to begin proceedings for voluntary dissolution. *Matter of Murray Hill Bank*, 153 N. Y. 199.

§ 487. Merger; when authorized.

1. Any two or more corporations, other than savings banks, organized under any one article of this chapter or under the laws of this state for the purposes or any of them mentioned in any one article of this chapter, are hereby authorized to merge one or more of such corporations into another of them as prescribed in succeeding sections of this article.

2. Any two savings banks located in a city of the first class and in the same county or borough, or any two or more savings banks located elsewhere in the state and in the same or adjoining counties, are hereby authorized to merge as prescribed in succeeding sections of this article.

Source.—Subdivision 1 is from former § 36. Subdivision 2 is new.

CROSS-REFERENCES.—As to merger of a trust company with a corporation organized under the Insurance Law, see *Ins. Law*, § 179.

As to merger or sale of stock corporations generally, see *Stock Corp. Law*, §§ 15-17, post.

DISTINGUISHED FROM CONSOLIDATION.—The merger provided for by §§ 487-496 is not a "consolidation" within the meaning of § 180 of the Tax Law. A merger is not a joining together of two corporations to make a new

one, but a swallowing up of one corporation by another. *Atty.-Gen. Rep.* (1903) 246.

PURCHASE OF ASSETS.—Instead of merging under this section, it is permissible for one trust company to purchase the assets of another under *Stock Corp. Law*, § 16. *Atty.-Gen. Rep.*, Jan. 16, 1913.

SPECIALLY CHARTERED TRUST COMPANIES.—Two trust companies, both of which were organized under special acts, were held entitled to merge under these provisions. *Colby v. Equitable Trust Co.*, 192 N. Y. 535, *aff'g* 124 App. Div. 262.

§ 488. The merger agreement.

The respective boards of directors of such corporations may, by a vote of a majority, and the respective boards of trustees of savings banks by a vote of two-thirds, of all the members of each board, make or authorize to be made between such corporations a written agreement in duplicate under their respective corporate seals, for the merger of such corporations. A sworn copy of the proceedings of such meetings, made by the secretaries thereof respectively, shall be presumptive evidence of the holding and action of such meetings.

Such agreement shall specify each corporation to be merged and the corporation which is to receive into itself the merging corporation or corporations, and it shall prescribe the terms and conditions of the merger and the mode of carrying it into effect. Such agreement may provide the name to be borne by the receiving corporation and such name may be the name of any corporation which is a party to such agreement. Such agreement may name the persons who shall constitute the board of directors or trustees of the receiving corporation after the merger shall have been accomplished, provided that the number and qualifications of such persons shall be in accordance with the provisions of this chapter relating to the number and qualifications of directors or trustees of such a corporation; or, except in the case of savings banks, such agreement may provide for a meeting of the shareholders or stockholders to elect a board of directors within sixty days after such merger, and may make provision for conducting the affairs of the corporation meanwhile.

In case of a merger agreement between trust companies, such agreement shall provide that the directors so named or elected, shall, after qualifying, divide themselves into classes as provided

in section two hundred and eight of this chapter, and that they may adopt new by-laws for said corporation.

Source.—Former § 36.

§ 489. Submission of merger agreement to superintendent of banks.

Such merger agreement and sworn copies of the proceedings of the meetings of the respective boards of directors or trustees at which the making of such agreement was authorized, shall be submitted in duplicate to the superintendent of banks for his approval.

Source.—Former § 36.

CROSS-REFERENCES.—Discretion of superintendent, see § 48.

§ 490. Submission of merger agreement to stockholders or shareholders.

Except in the case of savings banks, the merger agreement shall, within sixty days after due notice to such corporations of its approval by the superintendent, be submitted to the stockholders or shareholders of each of such corporations at a meeting thereof to be called upon notice of at least two weeks, specifying the time, place and object thereof addressed to each shareholder at his last known post-office address and deposited in the post-office, postage prepaid, and published for at least two successive weeks in one newspaper in each of the counties in which such corporations have their principal place of business; and if such agreement, as approved by the superintendent of banks, shall be approved at each of such meetings by the vote or ballot of the stockholders or shareholders owning at least two-thirds in amount of the stock or shares of their respective corporations, it shall thereupon become binding upon such corporations.

A sworn copy of the proceedings of such meetings, made by the secretaries thereof respectively, shall be presumptive evidence of the holding and action of such meetings.

Source.—Former § 37. "Within sixty days after due notice to such corporations of its approval by the superintendent" is new.

PUBLICATION OF NOTICE.—The notice to stockholders should be published in a daily newspaper on the twelve secular days of two successive weeks. *Atty.-Gen. Rep. (1912) vol. 2, p. 76.*

§ 491. Resubmission of approved merger agreement of savings banks to board of trustees.

The merger agreement of two or more savings banks shall, within sixty days after due notice to such savings banks of its approval by the superintendent, be submitted to a special meeting of the board of trustees of each of such savings banks. A notice of at least fifteen days which shall state the time, place and object of the meeting and shall be accompanied by a complete copy of the merger agreement, shall be duly given by mail to each trustee. If the merger agreement, as approved by the superintendent of banks, shall be duly approved at each of such meetings by a vote of three-fourths of all the members of each board of trustees, it shall thereupon become binding upon such savings banks.

Source.— New.

§ 492. Filing approved merger agreement and copies of proceedings.

After such merger agreement shall have become binding upon the respective corporations who are parties thereto, as provided in the two immediately preceding sections, one of the duplicates thereof with a copy of the superintendent's written approval and a sworn copy of the proceedings of the meetings at which such agreement was finally approved, made by the secretaries thereof respectively, shall be filed in the office of the superintendent, and the other duplicate of such agreement with the written approval of the superintendent and another sworn copy of such proceedings, shall be filed in the office of the clerk of the county in which is located the principal place of business of the corporation into which the other corporation or corporations are to be merged.

Source.— Former § 37.

§ 493. When merger takes effect.

Upon filing the duplicates of such merger agreement, together with copies of its approval by the superintendent, as prescribed in the last preceding section, the merger agreement shall take effect according to its terms and the merger shall thereupon take place as provided in the agreement.

Source.— Former § 37.

§ 494. Effect of merger.

Upon the merger of any corporation into another as provided in this article:

1. Its corporate existence shall be merged into that of such other corporation; and all and singular its rights, privileges and franchises, and its right, title and interest in and to all property of whatsoever kind, whether real, personal or mixed, and things in action, and every right, privilege, interest or asset of conceivable value or benefit then existing which would inure to it under an unmerged existence, shall be deemed fully and finally, and without any right of reversion, transferred to and vested in the corporation into which it shall have been merged, without further act or deed, and such last-mentioned corporation shall have and hold the same in its own right as fully as the same was possessed and held by the merged corporation from which it was, by operation of the provisions of this article, transferred.

2. Its rights, obligations and relations to any person, creditor, depositor, trustee or beneficiary of any trust, shall remain unimpaired, and the corporation into which it shall have been merged shall by such merger succeed to all such relations, obligations, trusts and liabilities, and shall execute and perform all such trusts, in the same manner as though it had itself assumed the relation or trust, or incurred the obligation or liability; and its liabilities and obligations to creditors existing for any cause whatsoever shall not be impaired by such merger; nor shall any obligation or liability of any stockholder or shareholder in any corporation which is a party to such merger be affected by any such merger, but such obligations and liabilities shall continue as fully and to the same extent as existed before such merger.

3. A pending action or other judicial proceeding to which any corporation that shall be so merged is a party, shall not be deemed to have abated or to have discontinued by reason of the merger, but may be prosecuted to final judgment, order or decree in the same manner as if the merger had not been made; or the corporation into which such other corporation shall have been merged may be substituted as a party to such action or proceeding, and any judgment, order or decree may be rendered for or against

it that might have been rendered for or against such other corporation if the merger had not occurred.

Source.—Former §§ 39 and 40, redrafted. Subdivision 1 is from former § 39. The clause “and every right, privilege, interest or asset of conceivable value or benefit then existing which would inure to it under an unmerged existence” is adapted from *Matter of Bergdorf*, 206 N. Y. 309. Subdivisions 2 and 3 are from former § 40.

EFFECT ON MERGED CORPORATION.—The merged corporation does not survive the merger or exist within or as a part of the other corporation. It remains a corporation for the single purpose of being sued upon and defending against causes of action existing against it at the time of the merger, and otherwise is non-existent. With the one exception it becomes rightless, propertyless and powerless. *Matter of Bergdorf*, 206 N. Y. 309, 315.

RIGHT TO ACT AS EXECUTOR.—Where a trust company is named as executor of a will, but before the testator's death it is merged into another trust company, the latter is entitled to letters testamentary. By virtue of the statute the will is to be read as if the latter company were designated therein. *Matter of Bergdorf*, 206 N. Y. 309, aff'g 149 App. Div. 530.

FORMAL ASSIGNMENT OF GUARANTY UNNECESSARY.—The merged company need not execute a formal assignment to the other company of a guaranty held by it in order to entitle the latter to maintain an action thereon. The provisions of this section are sufficient to vest title to the cause of action. *Bank of Long Island v. Young*, 101 App. Div. 88.

GOODWILL OF MERGED COMPANY.—It is not necessary to make allowance for the goodwill of the merged company, if it would add nothing to the assets in case of dissolution. *Colby v. Equitable Trust Co.*, 124 App. Div. 262, aff'd 192 N. Y. 535.

TAXATION OF STOCK OWNED BY MERGED CORPORATION.—Stock owned by the corporation which is merged into the other and transferred by it to the other is taxable in the manner specified in Tax Law, § 270. *Atty.-Gen. Rep.*, Jan. 16, 1913.

§ 495. Issuance of new certificates of stock or shares.

The corporation into which the other corporation or corporations shall have been merged as provided in this article, may require the return of the original certificate or certificates held by each stockholder or shareholder in such other corporation or corporations and may issue in lieu thereof new certificates for such number of its own shares as such stockholder or shareholder may be entitled to receive under the merger agreement.

Source.—Former § 37.

§ 496. Rights of dissenting stockholders or shareholders.

Any stockholder or shareholder not voting in favor of such agreement of merger at the meeting prescribed in section four hundred and ninety of this article, may at such meeting or within twenty days thereafter object to the merger and demand payment for his stock or shares; or, in the case of savings and loan associations or credit unions, if such shareholder be a borrower, he may demand liquidation of his indebtedness and cancellation of his shares. If the merger takes effect at any time after such demand, such stockholder or shareholder may, at any time within sixty days thereafter, apply to the supreme court at any special term thereof, held in the county wherein is situated the principal place of business of the corporation into which the other or others are merged, for the appointment of three persons to appraise the value of his stock or shares or the amount of said indebtedness, if any. The court shall thereupon appoint such appraisers and designate the time and place of their first meeting, with such directions in regard to their proceedings as shall be deemed proper, and shall also direct the time and manner in which payment shall be made of the value of such stock or shares to such stockholder or shareholder or liquidation of such indebtedness by him and cancellation of his stock or shares. The court may fill any vacancies in the board of appraisers. The appraisers shall meet at the time and place designated, and after being duly sworn to discharge their duties honestly and faithfully, they shall make and certify a written estimate of the value of such stock or shares, and the amount of such indebtedness, if any, at the time of the appraisal, and shall deliver one copy to the corporation and another to such stockholder or shareholder if demanded. The charges and expenses of the appraisers shall be paid by the corporation.

When the corporation shall have paid the appraised value of such stock or shares, or if such stockholder or shareholder be a borrower as aforesaid, when he shall have paid the amount of his indebtedness as fixed by such appraisal, such stock or shares shall be cancelled and such stockholder or shareholder shall cease to be a member of said corporation or to have any interest in such stock or shares or in the corporate property, and such stock or shares may be held and disposed of by the corporation for its own benefit; and if such stockholder or shareholder be a borrower

as aforesaid, proper instruments of acquittance shall be duly executed and delivered to him by the corporation and thereupon he shall be discharged from all further liability to the corporation.

Source.—Former § 38.

THIS SECTION IS NOT UNCONSTITUTIONAL as depriving the dissenting stockholders of their property without due process of law. *Colby v. Equitable Trust Co.*, 192 N. Y. 535, aff'g 124 App. Div. 262.

WHO IS A "STOCKHOLDER."—In *Matter of Rogers*, 102 App. Div. 466, it was held that the term "stockholder" as used in former § 38 meant the actual owner of stock and not the record holder of shares belonging to another. But in the present law, § 3, the term is defined as meaning, unless otherwise qualified, the holder of record.

ARTICLE XIII.**Laws Repealed; Construction; When to Take Effect.**

Section 500. Laws repealed.

501. Construction.

502. When to take effect.

§ 500. Laws repealed.

Of the laws enumerated in the schedule hereto annexed, that portion specified in the last column is hereby repealed.

§ 501. Construction.

The provisions of this chapter shall be construed as a continuation of the provisions of chapter ten of the laws of nineteen hundred nine, as amended, modified or amended according to the language employed, and not as a new enactment.

Source.— Gen. Constr. Law, § 95.

§ 502. When to take effect.

This act, except the repeal of chapters three hundred forty-eight of the laws of nineteen hundred ten and three hundred ninety-three of the laws of nineteen hundred eleven, shall take effect immediately; and the repeal of chapters three hundred forty-eight of the laws of nineteen hundred ten and three hundred ninety-three of the laws of nineteen hundred eleven, shall take effect on November first, nineteen hundred fourteen.

The act as originally introduced provided that the provisions relating to private bankers should become effective August 1, 1914, but before its enactment this date was changed to November 1, 1914. See notes to §§ 152, 161, 172.

SCHEDULE OF LAWS REPEALED.

Revised Statutes... Part 1, chapter 20, title 20.....All.

Laws of	Chapter	Section
1782.....	35.....	All
1804.....	117.....	All
1807.....	173.....	1
1812.....	239.....	59
R. L. 1813...	71.....	All
1815.....	32.....	All
1816.....	223.....	All
1816.....	14.....	All (fortieth session)
1817.....	263.....	2
1818.....	236.....	All
1824.....	240.....	All
1825.....	325.....	15, 16
1828.....	20.....	15, ¶ 16 (2d Meet.)
1828.....	21.....	1, ¶¶ 145, 216, 220, 263, 412 (2d Meet.)
1829.....	94.....	All
1830.....	243.....	All
1830.....	295.....	All
1833.....	260.....	All
1834.....	7.....	All
1834.....	190.....	13
1835.....	46.....	All
1835.....	155.....	All
1835.....	262.....	All
1835.....	307.....	All
1837.....	20.....	All
1837.....	74.....	All
1837.....	235.....	All
1837.....	350.....	All
1837.....	450.....	All
1837.....	474.....	All
1838.....	51.....	All
1838.....	260.....	All
1839.....	30.....	All

Laws of	Chapter	Section
1839.....	347.....	1-3
1839.....	355.....	All
1840.....	18.....	All
1840.....	202.....	All
1840.....	363.....	All
1841.....	46.....	All
1841.....	130.....	All
1841.....	292.....	All
1841.....	319.....	All
1842.....	3.....	All
1842.....	222.....	All
1842.....	247.....	All
1843.....	218.....	All
1844.....	41.....	All
1844.....	239.....	All
1844.....	281.....	All
1845.....	114.....	All
1846.....	97.....	All
1847.....	160.....	All
1847.....	419.....	All
1847.....	452.....	All
1847.....	478.....	All
1848.....	340.....	All
1848.....	344.....	All
1849.....	97.....	All
1849.....	226.....	All
1849.....	313.....	All
1849.....	437.....	All
1850.....	91.....	All
1850.....	251.....	All
1850.....	331.....	All
1851.....	68.....	All
1851.....	122.....	All
1851.....	164.....	All
1851.....	203.....	All
1853.....	223.....	All
1853.....	250.....	All
1853.....	257.....	All

Laws of	Chapter	Section
1853.....	492.....	All
1854.....	72.....	All
1854.....	138.....	All
1854.....	185.....	All
1854.....	242.....	All
1855.....	69.....	All
1855.....	93.....	All
1855.....	336.....	All
1857.....	103.....	All
1857.....	136.....	All
1857.....	189.....	All
1857.....	370.....	All
1857.....	804.....	All
1858.....	132.....	All
1858.....	136.....	All
1859.....	236.....	All
1859.....	277.....	All
1859.....	365.....	All
1862.....	62.....	All
1862.....	422.....	All
1863.....	22.....	All
1863.....	241.....	All
1863.....	315.....	All
1863.....	372.....	All
1864.....	113.....	All
1865.....	97.....	All
1865.....	214.....	All
1865.....	476.....	All
1866.....	26.....	All
1866.....	348.....	All
1866.....	564.....	All
1867.....	32.....	All
1867.....	191.....	All
1867.....	475.....	All
1867.....	476.....	All
1867.....	861.....	All
1868.....	845.....	All
1869.....	213.....	All

Laws of	Chapter	Section
1870.....	163.....	All
1871.....	456.....	All
1871.....	660.....	All
1871.....	693.....	All
1871.....	907.....	All
1872.....	820.....	20
1873.....	585.....	All
1874.....	126.....	All
1874.....	324.....	All
1875.....	50.....	All
1875.....	371.....	All
1875.....	564.....	All
1875.....	613.....	All
1877.....	10.....	All
1877.....	69.....	All
1877.....	256.....	All
1878.....	96.....	All
1878.....	99.....	All
1878.....	274.....	All
1878.....	347.....	All
1878.....	372.....	All
1879.....	122.....	All
1879.....	247.....	All
1879.....	422....	All
1879.....	424.....	All
1879.....	428.....	All
1879.....	437.....	All
1879.....	442.....	All
1880.....	134.....	All
1880.....	202.....	All
1880.....	287.....	All
1880.....	567.....	All
1881.....	373.....	All
1882.....	191.....	All
1882.....	402.....	All
1882.....	409.....	1-311, 328
1883.....	273.....	All
1883.....	282.....	All

Laws of	Chapter	Section
1883.....	338.....	All
1883.....	439.....	All
1884.....	47.....	All
1884.....	48.....	All
1884.....	504.....	All
1885.....	329.....	All
1885.....	425.....	All
1885.....	477.....	All
1886.....	498.....	All
1886.....	564.....	All
1886.....	569.....	All
1886.....	575.....	All
1887.....	517.....	All
1887.....	518.....	All
1887.....	524.....	All
1887.....	546.....	All
1887.....	556.....	All
1888.....	277.....	All
1888.....	373.....	All
1889.....	177.....	All
1889.....	414.....	All
1889.....	558.....	All
1890.....	146.....	All
1890.....	429.....	All
1890.....	439.....	All
1890.....	506.....	All
1890.....	525.....	All
1891.....	374.....	All
1892.....	689.....	All
1893.....	313.....	All
1893.....	314.....	All
1893.....	315.....	All
1893.....	337.....	All
1893.....	408.....	All
1893.....	440.....	All
1893.....	696.....	All
1894.....	178.....	All
1894.....	705.....	All

Laws of	Chapter	Section
1895.....	39.....	All
1895.....	326.....	All
1895.....	382.....	All
1895.....	415.....	All
1895.....	706.....	All
1895.....	813.....	All
1895.....	929.....	All
1895.....	930.....	All
1896.....	206.....	All
1896.....	452.....	All
1896.....	453.....	All
1896.....	454.....	All
1896.....	851.....	All
1897.....	134.....	All
1897.....	386.....	All
1897.....	441.....	All
1898.....	73.....	All
1898.....	98.....	All
1898.....	193.....	All
1898.....	236.....	All
1898.....	333.....	All
1898.....	348.....	All
1898.....	410.....	All
1898.....	556.....	All
1899.....	386.....	All
1899.....	451.....	All
1899.....	704.....	All
1900.....	42.....	All
1900.....	89.....	All
1900.....	199.....	All
1900.....	240.....	All
1900.....	310.....	All
1900.....	552.....	All
1900.....	567.....	All
1901.....	171.....	All
1901.....	253.....	All

Laws of	Chapter	Section
1901.....	328.....	All
1901.....	406.....	All
1901.....	443.....	All
1901.....	472.....	All
1901.....	503.....	All
1901.....	510.....	All
1901.....	660.....	All
1902.....	54.....	All
1902.....	78.....	All
1902.....	145.....	All
1902.....	360.....	All
1902.....	440.....	All
1902.....	598.....	All
1903.....	84.....	All
1903.....	160.....	All
1903.....	328.....	All
1903.....	640.....	All
1904.....	479.....	All
1904.....	492.....	All
1904.....	568.....	All
1904.....	607.....	All
1904.....	693.....	All
1905.....	297.....	All
1905.....	333.....	All
1905.....	394.....	All
1905.....	401.....	All
1905.....	414.....	All
1905.....	416.....	All
1905.....	418.....	All
1905.....	456.....	All
1905.....	491.....	All
1905.....	564.....	All
1905.....	604.....	All
1905.....	649.....	All
1905.....	673.....	All
1905.....	757.....	All
1906.....	337.....	All

Laws of	Chapter	Section
1906.....	432.....	All
1906.....	438.....	All
1906.....	481.....	All
1906.....	572.....	All
1906.....	573.....	All
1906.....	581.....	All
1906.....	600.....	All
1906.....	601.....	All
1907.....	247.....	All
1907.....	408.....	All
1907.....	522.....	All
1907.....	612.....	All
1908.....	57.....	All
1908.....	119.....	All
1908.....	120.....	All
1908.....	121.....	1
1908.....	122.....	All
1908.....	123.....	All
1908.....	124.....	All
1908.....	125.....	All
1908.....	143.....	All
1908.....	151.....	1
1908.....	152.....	All
1908.....	153.....	All
1908.....	154.....	All
1908.....	155.....	All
1908.....	156.....	1
1908.....	158.....	All
1908.....	169.....	All
1908.....	184.....	All
1908.....	194.....	1
1909.....	10.....	All
1909.....	25.....	150-154
1909.....	223.....	All
1909.....	240.....	2, 3
1909.....	294.....	All
1909.....	402.....	All
1909.....	410.....	All

Laws of	Chapter	Section
1909.....	497.....	All
1910.....	126.....	All
1910.....	127.....	All
1910.....	348.....	All
1910.....	399.....	All
1910.....	452.....	All
1911.....	200.....	All
1911.....	371.....	All
1911.....	382.....	All
1911.....	393.....	All
1911.....	585.....	All
1911.....	687.....	All
1911.....	707.....	All
1911.....	708.....	All
1911.....	709.....	All
1911.....	772.....	All
1911.....	861.....	All
1912.....	49.....	All
1912.....	100.....	All
1912.....	101.....	All
1912.....	102.....	All
1912.....	103.....	All
1912.....	104.....	All
1912.....	192.....	All
1912.....	212.....	All
1912.....	237.....	All
1913.....	94.....	All
1913.....	108.....	All
1913.....	113.....	All
1913.....	317.....	All
1913.....	416.....	All
1913.....	451.....	All
1913.....	482.....	All
1913.....	484.....	All
1913.....	579.....	All
1913.....	582.....	All
1913.....	628.....	All
1913.....	670.....	All

Code of Civil Procedure 746, last sentence.

Code of Civil Procedure 752, last sentence.

All of the laws in the foregoing list previous to Laws of 1909, ch. 10 (chapter 2 of the Consolidated Laws, constituting the "Banking Law") were repealed by that act, which is repealed by this chapter. The remainder of the laws repealed were amendments to the Banking Law, with the following exceptions:

Laws of 1909, ch. 25, §§ 150-154, constituted Art. 10 of the General Business Law, relating to sellers of tickets for transportation to or from foreign countries.

Laws of 1910, ch. 348, constituting Art. 3-a of the General Business Law relating to private banking.

Laws of 1911, ch. 393, which amended Art. 3-a of the General Business Law.

Laws of 1913, ch. 579, constituting Art. 5-a of the General Business Law which dealt with the subject of personal loan brokers.

GENERAL STATUTES

RELATING TO

BANKING CORPORATIONS

GENERAL CORPORATION LAW.

§ 1. Short title.

This chapter shall be known as the "General Corporation Law."

§ 2. Classification of corporations.

A corporation shall be either

1. A municipal corporation,
2. A stock corporation, or
3. A non-stock corporation.

A stock corporation shall be either

1. A moneyed corporation,
2. A railroad or other transportation corporation, or
3. A business corporation.

A non-stock corporation shall be either,

1. A religious corporation,
2. A membership corporation, or
3. Any corporation other than a stock corporation.

A reference in a general law to a class of corporations described in accordance with this classification shall include all corporations theretofore formed belonging to such class.

§ 3. Definitions.

1. A "municipal corporation" includes a county, town, school district, village and city and any other territorial division of the state established by law with powers of local government.

2. A "stock corporation" is a corporation having a capital stock divided into shares, and which is authorized by law to distribute to the holders thereof dividends or shares of the surplus profits of the corporation. A corporation is not a stock corpo-

ration because of having issued certificates called certificates of stock, but which are in fact merely certificates of membership, and which is not authorized by law to distribute to its members any dividends or share of profits arising from the operations of the corporation.

3. The term "non-stock corporation" includes every corporation other than a stock corporation.

4. A "moneyed corporation" is a corporation formed under or subject to the banking or the insurance law.

5. A "domestic corporation" is a corporation incorporated by or under the laws of the state or colony of New York. Every corporation which is not a domestic corporation is a foreign corporation, except as provided by the code of civil procedure for the purpose of construing such code.

6. The term "directors," when used in relation to corporations, shall include trustees or other persons, by whatever name known, duly appointed or designated to manage the affairs of the corporation.

7. The term "certificate of incorporation" shall include articles of association or any other written instrument required by law to be filed, to effect the incorporation of a corporation, including a certificate copy of an original certificate of incorporation filed for such purpose in pursuance of law.

8. The term "member of a corporation" shall include every person having a right to vote at a meeting of the corporation for the election of directors, other than a person having a right to vote only upon a proxy.

9. The term "office of a corporation" means its principal office within the state, or principal place of business within the state if it has no principal office therein.

10. The term "business of a corporation," when used with reference to a non-stock corporation, includes the operations for the conduct of which it is incorporated.

11. The term "corporate law" or "laws," when used in any law forming a part of the consolidation of the general laws of the state of which this chapter is a part, means the general statutes of this state relating to corporations included in such consolidation.

12. The existence of an easement in real property acquired or reserved by a municipal corporation, a railroad corporation or other transportation corporation, shall not be deemed an encumbrance upon such real property under any law relating to investments in mortgages upon real property by corporations, trustees, executors, administrators, guardians or other persons holding trust funds, but the effect of such an easement upon the real property which it affects, shall be taken into consideration in determining the value thereof.

Amended by L. 1914, ch. 128. In effect April 6, 1914. Chap. 128 of L. 1914, added subd. 12.

§ 4. Qualifications of incorporators.

A certificate of incorporation must be executed by natural persons, who must be of full age, and at least two-thirds of them must be citizens of the United States and one of them a resident of this state. This section shall not apply to a corporation formed by the reincorporation or consolidation of existing corporations, or to the reorganization of a corporation upon the sale of the property and franchises of a previously existing corporation or otherwise.

§ 6. Corporate names.

1. No certificate of incorporation of a proposed corporation having the same name as a corporation authorized to do business under the laws of this state, or a name so nearly resembling it as to be calculated to deceive, shall be filed or recorded in any office for the purpose of effecting its incorporation, or of authorizing it to do business in this state; nor shall any corporation except a religious, charitable or benevolent corporation be authorized to do business in this state unless its name has such word or words, abbreviation, affix or prefix, therein or thereto, as will clearly indicate that it is a corporation as distinguished from a natural person, firm or copartnership; or unless such corporation uses with its corporate name, in this state, such an affix or prefix. A corporation formed by the reincorporation, reorganization or consolidation of other corporations or upon the sale of the property or franchises of a corporation, or a corporation acquiring or becoming possessed of all the estate, property, rights, privileges and franchises of any other corporation or corporations

by merger, may have the same name as the corporation or one of the corporations to whose franchises it has succeeded. No corporation shall be hereafter organized under the laws of this state, with the word "trust," "bank," "banking," "insurance," "assurance," "indemnity," "guarantee," "guaranty," "title," "casualty," "surety," "fidelity," "savings," "investment," "loan" or "benefit" as part of its name, except a corporation formed under the banking law or the insurance law.

2. No corporation, society or association, whether now existing or hereafter organized under or by virtue of the laws of this state, shall ever employ the words "Lucretia Mott" to designate, describe or name any hospital, infirmary or dispensary, or any part thereof, or any similar institution.

Amended by L. 1911, chap. 638; L. 1912, chap. 2, and L. 1913, chap. 24.

§ 7. Amended and supplemental certificates.

If in the original or amended certificate of incorporation of any corporation, or if in a supplemental certificate of any corporation any informality exist, or if any such certificate contain any matter not authorized by law to be stated therein, or if the proof or acknowledgment thereof shall be defective, the incorporators or directors of the corporation may make and file an amended certificate correcting such informality or defect or striking out such unauthorized matter; and the certificate amended shall be deemed to be amended accordingly as of the date such amended certificate was filed, and upon the filing of such an amended certificate of incorporation, the corporation shall then for all purposes be deemed to be a corporation from the time of filing the original certificate.

The supreme court may, upon due cause shown, and proof made, and upon notice to the attorney-general, and to such other persons as the court may direct, and upon such terms and conditions as it may impose, amend any certificate of incorporation which fails to express the true object and purpose of the corporation, so as to truly set forth such object and purpose.

When an amended or supplemental certificate is filed, an entry shall be made upon the margin of the index and record of the original certificate of the date and place of record of every such amended certificate.

The amendment of a certificate under this section shall be without prejudice to any pending action or proceeding, or to any rights previously accrued.

§ 10. Limitation of powers; provisions of certificate.

1. No corporation shall possess or exercise any corporate powers not given by law, or not necessary to the exercise of the powers so given.

2. The certificate of incorporation of any corporation may contain any provision for the regulation of the business and the conduct of the affairs of the corporation, and any limitation upon its powers, or upon the powers of its directors and stockholders, which does not exempt them from the performance of any obligation or the performance of any duty imposed by law.

§ 11. Grant of general powers.

Every corporation as such has power, though not specified in the law under which it is incorporated:

1. To have succession for the period specified in its certificate of incorporation or by law, and perpetually when no period is specified.

2. To have a common seal, and alter the same at pleasure.

3. To acquire by grant, gift, purchase, devise or bequest, to hold and to dispose of such property as the purposes of the corporation shall require, subject to such limitations as may be prescribed by law.

4. To appoint such officers and agents as its business shall require, and to fix their compensation, and

5. To make by-laws, not inconsistent with any existing law, for the management of its property, the regulation of its affairs,

and the transfer of its stock, if it has any, and the calling of meetings of its members. Such by-laws may also fix the amount of stock, which must be represented at meetings of the stockholders in order to constitute a quorum, unless otherwise provided by law. By-laws duly adopted at a meeting of the members of the corporation shall control the action of its directors. No by-law adopted by the board of directors regulating the election of directors or officers shall be valid unless published for at least once a week for two successive weeks in a newspaper in the county where the election is to be held, and at least thirty days before such election. Subdivisions four and five of this section shall not apply to municipal corporations.

§ 13. Acquisition of additional real property.

When any corporation, except a life insurance corporation, shall have sold or conveyed any part of its real property, the supreme court may, notwithstanding any restriction of a general or special law, authorize it to purchase and hold from time to time other real property, upon satisfactory proof that the value of the property so purchased does not exceed the value of the property so sold and conveyed within the three years next preceding the application.

§ 14. Acquisition of property without the state.

Any domestic corporation transacting business in other states or foreign countries may acquire and dispose of such property as shall be requisite for such corporation in the convenient transaction of its business. Any domestic corporation establishing or maintaining a charitable, philanthropic or educational institution within this state may also carry on its work and establish or maintain one or more branches of such institution or an additional institution or additional institutions in any other state, the District of Columbia or in any part of the territories or dependencies of the United States of America or in any foreign country and for either of said purposes may take by devise or bequest, hold, purchase, mortgage, sell and convey or otherwise dispose of such real and personal property without this state as may be requisite therefor. But nothing in this section contained shall be construed as exempting from taxation property to any additional amount than is now allowed to such corporation under existing laws.

§ 22. Prohibition of banking powers.

No corporation, domestic or foreign, other than a corporation formed under or subject to the banking laws of this state or of the United States, except as permitted by such laws, shall by any implication or construction be deemed to possess the power of carrying on the business of discounting bills, notes or other evidences of debt, of receiving deposits, of buying and selling bills of exchange, or of issuing bills, notes or other evidences of debt for circulation as money, or of engaging in any other form of banking; nor shall any such corporation, except an express company having contracts with railroad companies for the operation of an express service upon the lines of such railroad companies, or a transatlantic steamship company, or a telegraph company, or a corporation incorporated prior to the year eighteen hundred and fifty, to promote the welfare of emigrants, possess the power of receiving money for transmission or of transmitting the same, by draft, traveler's check, money order or otherwise.

Amended by L. 1911, chap. 771.

§ 23. Qualification of members as voters.

Unless otherwise provided in the certificate of incorporation, every stockholder of record of a stock corporation shall be entitled at every meeting of the corporation to one vote for every share of stock standing in his name on the books of the corporation; and at every meeting of a non-stock corporation, every member, unless disqualified by the by-laws, shall be entitled to one vote. The stockholders of a stock corporation, by a by-law adopted by a vote at any annual meeting, or at any special meeting duly called for such purpose, may prescribe a period, not exceeding forty days prior to meetings of the stockholders, during which no transfer of stock on the books of the corporation may be made. Except in cases of express trust, or in which other provision shall have been made by written agreement between the parties, the record holder of stock which shall be held by him as security, or which shall actually belong to another, upon demand therefor and payment of necessary expenses thereof, shall issue to such pledgor or to such actual owner of such stock, a proxy to vote thereon. No member of a corporation shall sell his vote or issue a proxy to vote to any

person for any sum of money or any thing of value. The books and papers containing the record of membership of the corporation shall be produced at any meeting of its members upon the request of any member. If the right to vote at any such meeting shall be challenged, the inspectors of election, or other persons presiding thereat, shall require such books, if they can be had, to be produced as evidence of the right of the person challenged to vote at such meeting, and all persons who may appear from such books to be members of the corporation may vote at such meeting in person or by proxy, subject to the provisions of this chapter.

§ 26. Proxies.

Every member of a corporation, except a religious corporation, entitled to vote at any meeting thereof may so vote by proxy.

No officer, clerk, teller or bookkeeper of a corporation formed under or subject to the banking law shall act as proxy for any stockholder at any meeting of any such corporation.

Every proxy must be executed in writing by the member himself, or by his duly authorized attorney. No proxy hereafter made shall be valid after the expiration of eleven months from the date of its execution unless the member executing it shall have specified therein the length of time it is to continue in force, which shall be for some limited period. Every proxy shall be revocable at the pleasure of the person executing it; but a corporation having no capital stock may prescribe in its by-laws the persons who may act as proxies for members, and the length of time for which proxies may be executed.

§ 27. Challenges.

Every member of a corporation offering to vote at any election or meeting of the corporation shall, if required by an inspector of election or other officer presiding at such election or meeting, or by any other member present, take and subscribe the following oath: "I do solemnly swear that in voting at this election I have not, either directly, indirectly or impliedly received any promise or any sum of money or any thing of value to influence the giving of my vote or votes at this meeting or as a consideration therefor." Any person offering to vote as proxy for any other person shall

present his proxy and, if so required, take and subscribe the following oath: "I do solemnly swear that I have not, either directly, indirectly or impliedly, given any promise or any sum of money or any thing of value to induce the giving of a proxy to me to vote at this election, or received any promise or any sum of money or any thing of value to influence the giving of my vote at this meeting, or as a consideration therefor." The inspectors or persons presiding at the election may administer such oath, and all such oaths and proxies shall be filed in the office of the corporation.

§ 28. Effect of failure to elect directors.

If the directors shall not be elected on the day designated in the by-laws, or by law, the corporation shall not for that reason be dissolved; but every director shall continue to hold his office and discharge his duties until his successor has been elected.

§ 29. Mode of calling special election of directors.

If the election has not been held on the day so designated, the directors shall forthwith call a meeting of the members of the corporation for the purpose of electing directors, of which meeting notice shall be given in the same manner as of the annual meeting for the election of directors.

If such meeting shall not be so called within one month, or, if held, shall result in a failure to elect directors, any member of the corporation may call a meeting for the purpose of electing directors by publishing a notice of the time and place of holding such meeting at least once in each week for two successive weeks immediately preceding the election, in a newspaper published in the county where the election is to be held and in such other manner as may be prescribed in the by-laws for the publication of notice of the annual meeting, and by serving upon each member, either personally or by mail, directed to him at his last known post-office address, a copy of such notice at least two weeks before the meeting.

§ 30. Mode of conducting special election of directors.

Such meeting shall be held at the office of the corporation, or if it has none, at the place in this state where its principal business

has been transacted, or if access to such office or place is denied or can not be had, at some other place in the city, village or town where such office or place is or was located.

At such meeting the members attending shall constitute a quorum. They may elect inspectors of election and directors and adopt by-laws providing for future annual meetings and election of directors, if the corporation has no such by-laws, and transact any other business which may be transacted at an annual meeting of the members of the corporation.

§ 37. Extension of corporate existence.

Any domestic corporation at any time before the expiration thereof, may extend the term of its existence beyond the time specified in its original certificate of incorporation, or by law, or in any certificate of extension of corporate existence, by the consent of the stockholders owning two-thirds in amount of its capital stock, or if not a stock corporation, by the consent of two-thirds of its members, which consent shall be given either in writing or by vote at a special meeting of the stockholders called for that purpose, upon the same notice as that required for the annual meetings of the corporation; and a certificate under the seal of the corporation that such consent was given by the stockholders in writing, or that it was given by vote at a meeting as aforesaid, shall be subscribed and acknowledged by the president or a vice-president, and by the secretary or an assistant secretary of the corporation, and if a corporation formed under or subject to the banking law shall be filed in the office of the superintendent of banks, if an insurance corporation, in the office of the superintendent of insurance, and otherwise in the office of the secretary of state, and shall by such officer be duly recorded and indexed in a book specially provided therefor, and a certified copy of such certificate, with a certificate of such officer of such filing and record, or a duplicate original of such certificate, shall be filed and similarly recorded and indexed in the office of the clerk of the county wherein the corporation has its principal place of business, and shall be noted in the margin of the record of the original certificates of such corporation, if any, in such offices, and thereafter the term of the existence of such corporation shall be extended as designated in such certificate.

The certificate of incorporation of any corporation whose dura-

tion is limited by such certificate or by law, may require that the consent of the stockholders owning a greater percentage than two-thirds of the stock, if a stock corporation, or of more than two-thirds of the members, if a non-stock corporation, shall be requisite to effect an extension of corporate existence as authorized by this section.

Amended by L. 1913, ch. 306.

§ 38. Revival of corporate existence.

If the term of existence of any domestic corporation shall have expired and it shall be made satisfactorily to appear to the supreme court that such corporation was legally organized pursuant to any law of this state, and that it shall have issued its bonds payable at a date beyond the date fixed in its charter or certificate of incorporation for the expiration of its corporate existence, and such bonds shall be unmatured and unpaid, or, if a bank, incorporated under a general law of this state, that shall have issued any other obligations or shall have incurred any other indebtedness which at the date of the application shall be satisfied or unpaid, the supreme court may, upon the application of any person interested and upon such notice to such other parties as the court may require, by order, authorize the filing and recording of a certificate reviving the existence of such corporation, upon such conditions and with such limitations as such order shall specify, and extending such corporate existence for a term not exceeding the term for which it was originally incorporated. Upon filing and recording such certificate in the same manner as certificates of extension of corporate existence duly issued before the expiration of the existence of a domestic corporation are authorized by law to be filed and recorded, such corporate existence shall be revived and extended in pursuance of the terms of such order, but such revival and extension shall not affect any litigation commenced after such expiration and pending at the time of such revival.

Amended by L. 1911, chap. 63.

§ 39. Approval of certificates of extension or revival; when required.

In the case of a corporation formed under or subject to the banking law, no certificate of extension or revival shall be filed or re-

corded unless it shall have indorsed thereon the written approval of the superintendent of banks; or, if an insurance corporation, unless it shall have indorsed thereon the written approval of the superintendent of insurance; and, if a turnpike or bridge corporation, it shall not be filed unless it shall have indorsed thereon or annexed thereto a certified copy of a resolution of the board of supervisors of each county in which such turnpike or bridge is located, approving of and authorizing such extension.

§ 60. Petition by corporation to change name.

A petition to assume another corporate name may be made by a domestic corporation, whether incorporated by a general or special law, to the supreme court at a special term thereof, held in the judicial district in which its principal business office shall be situated, or, if it be other than a stock corporation, at a special term held in the judicial district in which its certificate of incorporation is filed or recorded, or in which its principal property is situated, or in which its principal operations are or theretofore have been conducted. If it be a banking, insurance or railroad corporation, the petition must be authorized by a resolution of the directors of the corporation, and approved if a banking corporation, by the superintendent of banks; if an insurance corporation by the superintendent of insurance, and if a railroad corporation, by the public service commission. The petition to change the name of any other corporation must have annexed thereto a certificate of the secretary of state, that the name which such corporation proposes to assume is not the name of any other domestic corporation or a name which he deems so nearly resembling it, as to be calculated to deceive.

Amended by chap. 296 of 1910.

§ 61. Contents of petition.

The petition must be in writing, signed by the petitioner and verified in like manner as a pleading in a court of record, and must specify the grounds of the application, its present name, and the name it proposes to assume, which must not be the name of any other corporation, or a name so nearly resembling it as to be calculated to deceive; and if it be a railroad corporation, a corpo-

ration having banking powers or the power to make loans upon pledges or deposits, or to make insurances, that the petition has been duly authorized by a resolution of the directors of the corporation and approved by the proper officer.

§ 62. Notice of presentation of petition.

If the petition be made by a corporation located elsewhere than in the city and county of New York, notice of the presentation thereof shall be published once in each week for three successive weeks in a newspaper of every county in which such corporation shall have a business office, or if it has no business office, of the county in which its principal corporate property is situated, or in which its operations are or theretofore have been principally conducted, which newspaper, if it be a banking corporation, shall be designated by the superintendent of banks, if an insurance corporation, by the superintendent of insurance, or of a railroad corporation, by the public service commission. In the city and county of New York such notice shall be published once in each week for three successive weeks in two daily newspapers published in such county. If the petition being made by a domestic corporation organized under or subject to the religious or membership corporations law the court may dispense with the publication of the notice of the presentation of such petition or require notice of such presentation to be given to such person and in such manner as the court thinks proper.

A copy of the petition and notice of motion shall be filed with the secretary of state, and the proposed name shall thereupon be reserved for said corporation until three weeks after the date of such motion, and until three weeks after the date of any adjournment of such motion if notice of such adjournment shall be filed with the secretary of state, and no certificate of incorporation of a proposed corporation, having the same name as the name proposed in such petition, or a name so nearly resembling it as to be calculated to deceive, shall be filed in any office for the purpose of effecting its incorporation, and no corporation formed without the state of New York having the same name or a name so nearly resembling it as to be calculated to deceive shall be given authority to do business in this state.

Amended by chap. 296 of 1910.

§ 63. Order authorizing change.

If the court to which the petition is presented is satisfied thereby, or by the affidavit and certificate presented therewith, that the petition is true, and that there is no reasonable objection to the change of name proposed and that the petition has been duly authorized and that notice of the presentation of the petition, if required by law, has been made, the court shall make an order authorizing the petitioner to assume the name proposed on a day specified therein, not less than thirty days after the entry of the order. The order shall be directed to be entered and the papers on which it was granted to be filed within ten days thereafter in the office of the clerk of the county in which its certificate of incorporation, if any, shall be filed, or if there be none filed, in which its principal office shall be located, or if it has no business office in the county in which its principal property is situated, or in which its operations are or theretofore have been principally conducted, or in the office of the clerk of the county in which the special term granting the order is held; and that a certified copy of such order shall, within ten days after the entry thereof, be filed in the office of the secretary of state; and also, if it be a banking corporation, in the office of the superintendent of banks, or if it be an insurance corporation, in the office of the superintendent of insurance, or if it be a railroad corporation, in the offices of the public service commissions. Such order shall also direct the publication, within ten days after the entry thereof of a copy thereof, in a designated newspaper, in the county in which the order is directed to be entered, once in each week for four successive weeks. The court may dispense with the publication of a copy of such order and require notice to be given to such persons and in such manner as it thinks proper if the petition be made by a domestic corporation organized under or subject to the religious or membership corporations law.

Amended by chap. 296 of 1910.

§ 64. When change to take effect.

If the order shall be fully complied with, and within forty days after the making of the order, an affidavit of the publication thereof shall be filed and recorded in the office in which the order is en-

tered, and in each office in which certified copies thereof are required to be filed, if any, the petitioner shall, on and after the day specified for that purpose in the order, be known by the name which is hereby authorized to be assumed, and by no other name. No proceedings had prior to April fourth, eighteen hundred and ninety-four, under sections two thousand four hundred and fourteen and two thousand four hundred and fifteen of the code of civil procedure for the change of the name of a corporation, shall be invalid by reason of the non-filing of an affidavit of the publication of the order changing such name within twenty days from the date thereof.

And no proceedings heretofore had under the provisions of article three, chapter twenty-three, consolidated laws, for the change of the name of a corporation, shall be invalid by reason of the non-filing and recording of such affidavit of the publication of the order changing such name within forty days from the making of such order.

Amended by L. 1913, chap. 721. In effect May 24, 1913.

§ 65. Substitution of new name in pending action or proceeding.

An action or special proceeding, civil or criminal, commenced by or against a corporation whose name is so changed shall not abate, nor shall any relief, recovery or other proceeding therein be prevented, impeded or impaired in consequence of such change of name. The plaintiff in the action or the party instituting the special proceeding, or the people, as the case requires, may at any time, obtain an order amending any of the papers or proceedings therein, by the substitution of the new name, without costs and without prejudice to the action or proceeding.

§ 90. Action against officers of corporation for misconduct.

An action may be maintained against one or more trustees, directors, managers, or other officers of a corporation, to procure a judgment for the following purposes, or so much thereof as the case requires:

1. Compelling the defendants to account for their official conduct, including any neglect of or failure to perform their duties, in the management and disposition of the funds and property, committed to their charge.

2. Compelling them to pay to the corporation, which they represent, or to its creditors, any money, and the value of any property, which they have acquired to themselves, or transferred to others, or lost, or wasted, by or through any neglect of or failure to perform or by other violation of their duties.

3. Suspending a defendant from exercising his office, where it appears that he has abused his trust.

4. Removing a defendant from his office, upon proof or conviction of misconduct, and directing a new election to be held by the body or board duly authorized to hold the same, in order to supply the vacancy created by the removal; or, where there is no such body or board, or where all the members thereof are removed, directing the removal to be reported to the governor, who may, with the advice and consent of the senate, fill the vacancies.

5. Setting aside an alienation of property, made by one or more trustees, directors, managers or other officers of a corporation, contrary to a provision of law, or for a purpose foreign to the lawful business and objects of the corporation, where the alienee knew the purpose of the alienation.

6. Restraining and preventing such an alienation, where it is threatened, or where there is good reason to apprehend that it will be made.

7. The court must, upon the application of either party, make an order directing the trial by a jury of the issue of neglect or failure of defendants to perform their duties; and for that purpose the questions to be tried must be prepared and settled as prescribed in section nine hundred and seventy of the code of civil procedure.

As to any litigation pending prior to September one, nineteen hundred and seven, the provisions of this section as they existed prior to that date shall apply.

§ 91. Who may bring such an action.

An action may be brought, as prescribed in the last section, by the attorney-general in behalf of the people of the state, or, except where the action is brought for the purpose specified in subdivision third or fourth of that section, by a creditor of the corporation, or by a trustee, director, manager, or other officer of the corporation, having a general superintendence of its concerns.

§ 91a. Actions against officers by corporation, or receiver or trustee.

The supreme court shall also have and exercise jurisdiction in equity, at the suit of a corporation, or of a receiver, or trustee in bankruptcy thereof, to compel one or more trustees, directors, managers or other officers of the corporation to account for injury to or losses of the funds, assets or property of the corporation, caused by or through any neglect or failure of the defendants to perform, or for violation of, their duties. The court must, upon the application of either party, make an order directing the trial by jury of the issue of negligence, and for that purpose the questions to be tried must be prepared and settled as prescribed in section nine hundred and seventy of the code of civil procedure.

Added by L. 1913, chap. 633.

§ 92. Visitatorial power over corporation not affected by this article.

This article does not divest or impair any visitatorial power over a corporation, which is vested by statute in a corporate body, or a public officer.

STOCK CORPORATION LAW.**§ 16. Voluntary sale of franchise and property.**

A stock corporation, except a railroad corporation and except as otherwise provided by law, with the consent of two-thirds of its stock, may sell and convey its property, rights, privileges and franchises, or any interest therein or any part thereof to a domestic corporation, engaged in a business of the same general character, or which might be included in the certificate of incorporation of a corporation organizing under any general law of this state for a business of the same general character, and a domestic corporation the principal business of which is carried on in, and the principal tangible property of which is located within a state adjoining the state of New York, may with the consent of the holders of ninety-five per centum of its capital stock, sell and convey its property situate without the state of New York, not including its franchises, to a corporation organized under the laws of such adjoining state, and such sale and conveyance shall, in case of a sale to a domestic corporation, vest the rights, property and franchises thereby trans-

ferred, and in case of a sale to a foreign corporation the property sold, in the corporation to which they are conveyed for the term of its corporate existence, subject to the provisions and restrictions applicable to the corporation conveying them. Before such sale or conveyance shall be made such consent shall be obtained at a meeting of the stockholders called upon like notice as that required for an annual meeting.

§ 17. Rights of non-consenting stockholders on voluntary sale of franchise and property.

If any stockholder not voting in favor of such proposed sale or conveyance shall at such meeting, or within twenty days thereafter, object to such sale, and demand payment for his stock, he may, within sixty days after such meeting, apply to the supreme court at any special term thereof held in the district in which the principal place of business of such corporation is situated, upon eight days' notice to the corporation, for the appointment of three persons to appraise the value of such stock, and the court shall appoint three of such appraisers, and designate the time and place of their proceedings as shall be deemed proper, and also direct the manner in which payment for such stock shall be made to such stockholders. The court may fill any vacancy in the board of appraisers occurring by refusal or neglect to serve or otherwise. The appraisers shall meet at the time and place designated, and they or any two of them, after being duly sworn honestly and faithfully to discharge their duties, shall estimate and certify the value of such stock at the time of such dissent, and deliver one copy to such corporation, and another to such stockholder, if demanded; the charges and expenses of the appraisers shall be paid by the corporation. When the corporation shall have paid the amount of such appraisal, as directed by the court, such stockholders shall cease to have any interest in such stock and in the corporate property of such corporation and such stock may be held or disposed of by such corporation.

§ 18. Alterations or extension of business.

Any stock corporation heretofore or hereafter organized under any general or special law of this state may alter its certificate of

incorporation so as to include therein any purposes, powers or provisions which at the time of such alteration may apply to corporations engaged in a business of the same general character, or which might be included in the certificate of incorporation of a corporation organized under any general law of this state for a business of the same general character, by filing in the manner provided for the original certificate of incorporation an amended certificate, executed by the president and secretary, stating the alteration proposed, and that the same has been duly authorized by a vote of a majority of the directors and also by a vote of stockholders representing at least three-fifths of the capital stock, at a meeting of the stockholders called for the purpose in the manner provided in section sixty-three of this chapter, and a copy of the proceedings of such meeting, verified by the affidavit of one of the directors present thereat, shall be filed with such amended certificate.

§ 25. Directors.

The directors of every stock corporation shall be chosen at the time and place fixed by the by-laws of the corporation by a plurality of the votes at such election. Each director shall be a stockholder unless otherwise provided in the certificate, or in a by-law adopted by a stockholders' meeting. Vacancies in the board of directors shall be filled in the manner prescribed in the by-laws. Notice of the time and place of holding any election of directors shall be given by publication thereof, at least once in each week for two successive weeks immediately preceding such election, in a newspaper published in the county where such election is to be held, and in such other manner as may be prescribed in the by-laws. Policyholders of an insurance corporation shall be eligible to election as directors, whether or not they be stockholders. At least one-fourth in number of the directors of every stock corporation shall be elected annually.

§ 26. Change of number of directors.

The number of directors of any stock corporation may be increased or reduced, but not below the minimum number pre-

scribed by law, when the stockholders owning a majority of the stock of the corporation shall so determine, at a meeting to be held at the usual place of meeting of the directors, on two weeks' notice in writing to each stockholder of record. Such notice shall be served personally or by mail, directed to each stockholder at his last known post-office address. Proof of the service of such notice shall be filed in the office of the corporation at or before the time of such meeting. The proceedings of such meeting shall be entered in the minutes of the corporation and a transcript thereof verified by the president and secretary of the meeting shall be filed in the offices where the original certificates of incorporation were filed. Such increase or reduction may also be effected by unanimous consent without a meeting, in which case there shall be filed in the offices herein specified the unanimous consent of the stockholders in writing, signed by them, or their duly authorized proxies, but no such consent shall be valid unless there is annexed thereto an affidavit of the custodian of the stock book of such corporation stating that the persons who have signed such consent, either in person or by proxy, are the holders of record of the entire capital stock of said corporation issued and outstanding. If a corporation formed under or subject to the banking law, the consent of the superintendent of banks, and if an insurance corporation, the consent of the superintendent of insurance, shall be first obtained to such increase or reduction of the number of directors. This section shall apply to any stock corporation whether organized under a general or special law, and the number of directors may be increased as hereby provided notwithstanding the maximum number of directors now prescribed by law. If the number of directors be increased, the additional directors authorized by such increase shall be elected by the votes of a majority of the directors in office at the time of the increase. If the original or an amended certificate of incorporation of the corporation shall provide that the directors shall be divided into two or more classes, whose terms of office shall respectively expire at different times, the additional directors shall be divided among such classes as nearly as practicable in proportion to the respective numbers of directors constituting each class prior to such increase.

Amended by L. 1909, chap. 421.

§ 27. When acts of directors void.

When the directors of any corporation for the first year of its corporate existence shall hold over and continue to be directors after the first year, because of their neglect or refusal to adopt the by-laws required to enable the stockholders to hold the annual election for directors, all their acts and proceedings while so holding over, done for and in the name of the corporation, designed to charge upon it any liability or obligation for the services of any such director, or any officer, or attorney or counsel appointed by them, and every such liability or obligation shall be held to be fraudulent and void.

§ 28. Liability of directors for making unauthorized dividends.

The directors of a stock corporation shall not make dividends, except from the surplus profits arising from the business of such corporation, nor divide, withdraw or in any way pay to the stockholders or any of them, any part of the capital of such corporation, or reduce its capital stock, except as authorized by law. In case of any violation of the provisions of this section, the directors under whose administration the same may have happened, except those who may have caused their dissent therefrom to be entered at large upon the minutes of such directors at the time, or were not present when the same happened, shall jointly and severally be liable to such corporation and to the creditors thereof to the full amount of any loss sustained by such corporation or its creditors respectively by reason of such withdrawal, division or reduction. But this section shall not prevent a division and distribution of the assets of any such corporation remaining after the payment of all its debts and liabilities upon the dissolution of such corporation or the expiration of its charter; nor shall it prevent a corporation from accepting shares of its capital stock in complete or partial settlement of a debt owing to the corporation, which by the board of directors shall be deemed to be bad or doubtful.

§ 30. Officers.

The directors of a stock corporation may appoint from their number a president, and may appoint a secretary, treasurer, and other officers, agents and employees, who shall respectively have

such powers and perform such duties in the management of the property and affairs of the corporation, subject to the control of the directors, as may be prescribed by them or in the by-laws. The directors may require any such officer, agent or employee to give security for the faithful performance of his duties, and may remove him at pleasure. The policyholders of an insurance corporation shall be eligible to election or appointment as its officers.

§ 31. Inspectors and their oath.

The inspectors of election of every stock corporation shall be appointed in the manner prescribed in the by-laws, but the inspectors of the first election of directors and of all previous meetings of the stockholders shall be appointed by the board of directors named in the certificate of incorporation. No director or officer of a moneyed corporation shall be eligible to election or appointment as inspector. Each inspector shall be entitled to a reasonable compensation for his services, to be paid by the corporation, and if any inspector shall refuse to serve, or neglect to attend at the election, or his office become vacant, the meeting may appoint an inspector in his place unless the by-laws otherwise provide. The inspectors appointed to act at any meeting of the stockholders shall, before entering upon the discharge of their duties, be sworn to faithfully execute the duties of inspector at such meeting with strict impartiality, and according to the best of their ability, and the oath so taken shall be subscribed by them, and immediately filed in the office of the clerk of the county in which such election or meeting shall be held, with a certificate of the result of the vote taken thereat.

§ 35. Liability of officers for false certificates, reports or public notices.

If any certificate or report made or public notice given by the officers or directors of a stock corporation shall be false in any material representation, the officers and directors signing the same shall jointly and severally be personally liable to any person who has become a creditor or stockholder of the corporation upon the faith of any such certificate, report, notice or any material representation therein to the amount of the debt contracted upon the

faith thereof if not paid when due, or the damage sustained by any purchaser of or subscriber to its stock upon the faith thereof. The liability imposed by this section shall exist in all cases where the contents of any such certificate, report or notice or of any material representation therein shall have been communicated either directly or indirectly to the person so becoming a creditor or stockholder and he became such creditor or stockholder upon the faith thereof. No action can be maintained for a cause of action created by this section unless brought within two years from the time the certificate, report or public notice shall have been made or given by the officers or directors of such corporation.

§ 50. Issue and transfers of stock.

The stock of every stock corporation shall be represented by certificates prepared by the directors and signed by the president or vice-president and secretary or treasurer and sealed with the seal of the corporation, and shall be transferable in the manner prescribed in this chapter and in the by-laws. No share shall be transferable until all previous calls thereon shall have been fully paid in.

§ 51. Transfers of stock by stockholder indebted to corporation.

If a stockholder shall be indebted to the corporation, the directors may refuse to consent to a transfer of his stock until such indebtedness is paid, provided a copy of this section is written or printed upon the certificate of stock.

§ 62. Increase or reduction of capital stock.

Any domestic corporation may increase or reduce its capital stock in the manner herein provided, but not above the maximum or below the minimum, if any, prescribed by general law governing corporations formed for similar purposes. If increased, the holders of the additional stock issued shall be subject to the same liabilities with respect thereto as are provided by law in relation to the original capital; if reduced, the amount of its debts and liabilities shall not exceed the amount of its reduced capital, unless an insurance corporation, in which case the amount of its debts and liabilities shall not exceed the amount of its reduced capital and other assets. The owner of any stock shall not be

relieved from any liability existing prior to the reduction of the capital stock of any stock corporation. If a banking corporation, whether the capital be increased or reduced, its assets shall at least be equal to its debts and liabilities and the capital stock, as increased or reduced. A domestic railroad corporation may increase or reduce its capital stock in the manner herein provided, notwithstanding any provision contained herein, or in any general or special law fixing or limiting the amount of capital stock which may be issued by it.

§ 63. Notice of meeting to increase or reduce capital stock.

Every such increase or reduction must be authorized either by the unanimous consent of the stockholders, expressed in writing and filed in the office of the secretary of state and in the office of the clerk of the county in which the principal business office of the corporation is located, or by a vote of the stockholders owning at least a majority of the stock of the corporation, taken at a meeting of the stockholders specially called for that purpose in the manner provided by law or by the by-laws. Notice of the meeting, stating the time, place and object, and the amount of the increase or reduction proposed, signed by the president or a vice-president and the secretary, shall be published once a week, for at least two successive weeks, in a newspaper in the county where its principal business office is located, if any is published therein, and a copy of such notice shall be duly mailed to each stockholder or member at his last-known post-office address at least two weeks before the meeting or shall be personally served on him at least five days before the meeting.

§ 64. Conduct of such meeting; certificate of increase or reduction.

If, at the time and place specified in the notice, the stockholders shall appear in person or by proxy in numbers representing at least a majority of all the shares of stock, they shall organize by choosing from their number a chairman and secretary, and take a vote of those present in person or by proxy, and if a sufficient number of votes shall be given in favor of such increase or reduction, or if the same shall have been authorized by the unanimous

consent of stockholders expressed in writing signed by them or their duly authorized proxies, a certificate of the proceedings showing a compliance with the provisions of this chapter, the amount of capital theretofore authorized, and the proportion thereof actually issued, and the amount of the increased or reduced capital stock, and in case of the reduction of capital stock the whole amount of the ascertained debts and liabilities of the corporation, shall be made, signed, verified and acknowledged by the chairman and secretary of the meeting, and filed in the office of the clerk of the county where its principal place of business shall be located, a duplicate thereof in the office of the secretary of state, and, if a corporation formed under or subject to the banking law, a triplicate thereof in the office of the superintendent of banks, and if an insurance corporation, a triplicate thereof in the office of the superintendent of insurance. In case of a reduction of the capital stock, except of a railroad corporation or a moneyed corporation, such certificate or consent hereinafter provided for shall have indorsed thereon the approval of the comptroller, to the effect that the reduced capital is sufficient for the proper purposes of the corporation, and is in excess of its ascertained debts and liabilities; and in case of the increase or reduction of the capital stock of a railroad corporation or a moneyed corporation, the certificate or the unanimous consent of stockholders, as the case may be, shall have indorsed thereon the approval of the public service commission having jurisdiction thereof, if a railroad corporation; of the superintendent of banks, if a corporation formed under or subject to the banking law, and of the superintendent of insurance, if an insurance corporation. When the certificate herein provided for, or the unanimous consent of stockholders in writing, signed by them or their duly authorized proxies, approved as aforesaid, has been filed, the capital stock of such corporation shall be increased or reduced, as the case may be, to the amount specified in such certificate or consent. The proceedings of the meeting at which such increase or reduction is voted, or, if such increase or reduction shall have been authorized by unanimous consent without a meeting, then a copy of such consent shall be entered upon the minutes of the corporation. If the capital stock is reduced, the amount of capital over and above the amount of the reduced

capital shall, if the meeting or consents so determine or provide, be returned to the stockholders pro rata, at such times and in such manner as the directors shall determine, except in the case of the reduction of the capital stock of an insurance corporation, as an alternative to make good an existing impairment.

Amended by L. 1913, ch. 305.

TAX LAW

§ 4. Exemption from taxation.

The following property shall be exempt from taxation:

14. The deposits in any bank for savings which are due depositors, the accumulations in any domestic life insurance corporation, held for the exclusive benefit of the insured, other than real estate and stocks, now liable for taxation; the accumulations of any incorporated co-operative loan association upon the shares of such association held by any person; and personal property of any corporation, person, company or association transacting the business of fire, casualty, or surety insurance in this state equal in value to the unearned premiums required by the laws of this state, or the regulations of its insurance department, to be charged as a liability.

§ 13. Stockholders of bank taxable on shares.

The stockholders of every bank or banking association organized under the authority of this state, or of the United States, shall be assessed and taxed on the value of their shares of stock therein; said shares shall be included in the valuation of the personal property of such stockholders in the assessment of taxes in the tax district where such bank or banking association is located, and not elsewhere, whether the said stockholders reside in said tax district or not.

§ 14. Place of taxation of individual bank capital.

Every individual banker shall be taxable upon the amount of capital invested in his banking business in the tax district where the place of such business is located and shall, for that purpose, be deemed a resident of such tax district.

§ 23. Banks to make report.

The chief fiscal officer of every bank or banking association organized under the authority of this state, or of the United States, shall, on or before the first day of July, in each year, furnish the assessors of the tax district in which its principal office is located a statement under oath of the condition of such bank or banking association on the first day of June next preceding, stating the amount of its authorized capital stock, the number of shares and the par value of the shares thereof, the amount of stock paid in, the amount of its surplus and of its undivided profits, if any, a complete list of the names and residences of its stockholders and the number of shares held by each. In case of neglect or refusal on the part of any bank or banking association to report as herein prescribed, or to make other or further reports as may be required, such bank or banking association shall forfeit the sum of one hundred dollars for each failure, and the additional sum of ten dollars for each day such failure continues, and an action therefor shall be prosecuted by the county treasurer of the county in which such bank or banking association so neglecting or refusing to report is located, and in the city of New York by the receiver of taxes thereof. There shall, in addition to such report, be kept in the office of every such bank or banking association a full and correct list of the names and residences of all stockholders therein, and of the number of shares held by each, and such lists shall be subject to the inspection of the assessors at all times. The list of stockholders furnished by such bank or banking association shall be deemed to contain the names of the owners of such shares as are set opposite them, respectively, for the purpose of assessment and taxation.

§ 24. Bank shares, how assessed.

In assessing the shares of stock of banks or banking associations organized under the authority of this state or the United States, the assessment and taxation shall not be at a greater rate than is made or assessed upon other moneyed capital in the hands of individual citizens of this state. The value of each share of stock of each bank and banking association, except such as are in liquidation, shall be ascertained and fixed by adding together the

amount of the capital stock, surplus and undivided profits of such bank or banking association and by dividing the result by the number of outstanding shares of such bank or banking association. The value of each share of stock in each bank or banking association in liquidation shall be ascertained and fixed by dividing the actual assets of such bank or banking association by the number of outstanding shares of such bank or banking association. The rate of tax upon the shares of stock of banks and banking associations shall be one per centum upon the value thereof, as ascertained and fixed in the manner hereinbefore provided, and the owners of the stock of banks and banking associations shall be entitled to no deduction from the taxable value of their shares because of the personal indebtedness of such owners, or for any other reason whatsoever. Complaints in relation to the assessments of the shares of stock of banks and banking associations made under the provisions of this article shall be heard and determined as provided in section thirty-seven of this chapter. The said tax shall be in lieu of all other taxes whatsoever for state, county or local purposes upon the said shares of stock, and mortgages, judgments and other choses in action and personal property held or owned by banks or banking associations the value of which enters into the value of said shares of stock shall also be exempt from all other state, county or local taxation. The tax herein imposed shall be levied in the following manner: The board of supervisors of the several counties shall, on or before the fifteenth day of December in each year, ascertain from an inspection of the assessment-rolls in their respective counties, the number of shares of stock of banks and banking associations in each town, city, village, school and other tax district, in their several counties, respectively, in which such shares of stock are taxable, the names of the banks issuing the same, respectively, and the assessed value of such shares, as ascertained in the manner provided in this article and entered upon the said assessment-rolls, and shall forthwith mail to the president or cashier of each of said banks or banking associations a statement setting forth the amount of its capital stock, surplus and undivided profits, the number of outstanding shares thereof, the value of each share of stock taxable in said county, as ascertained in the manner herein provided, and the aggregate amount

of tax to be collected and paid by such bank and banking association, under the provisions of this article. A certified copy of each of said statements shall be sent to the county treasurer. It shall be the duty of every bank or banking association to collect the tax due upon its shares of stock from the several owners of such shares, and to pay the same to the treasurer of the county wherein said bank or banking association is located, and in the city of New York to the receiver of taxes thereof on or before the thirty-first day of December in said year and any bank or banking association failing to pay the said tax as herein provided shall be liable by way of penalty for the gross amount of the taxes due from all the owners of the shares of stock, and for an additional amount of one hundred dollars for every day of delay in the payment of said tax. Every bank or banking association so paying the taxes due upon the shares of its stock shall have a lien on the shares of stock, and on all property of the several share owners in its hands, or which may at any time come into its hands, for reimbursement of the taxes so paid on account of the several shareholders, with legal interest; and such lien may be enforced in any appropriate manner. The tax hereby imposed shall be distributed in the following manner: The board of supervisors of the several counties shall ascertain the tax rate of each of the several town, city, village, school and other tax districts in their counties, respectively, in which the shares of stock of banks and banking associations shall be taxable, which tax rates shall include the proportion of state and county taxes levied in such districts, respectively, for the year for which the tax is imposed, and the proportion of the tax on bank stock to which each of said districts shall be respectively entitled shall be ascertained by taking such proportion of the tax upon the shares of stock of banks and banking associations, taxable in such districts, respectively, under the provisions of this chapter as the tax rate of such tax district shall bear to the aggregate tax rates of all the tax districts in which said shares of stock shall be taxable. The clerks of the several cities, villages and school districts to which any portion of the tax on shares of stock of banks and banking associations is to be distributed under this section shall, in writing and under oath, annually report to the board of supervisors of their respective counties,

during the first week of the annual session of such board, the tax rate of such city, village and school district for the year prior to the meeting of each such board. The said board of supervisors shall issue their warrant or order to the county treasurer on or before the fifteenth day of December in each year, setting forth the number of shares of bank stock taxable in each town, city, village, school and other tax district in said county, in which said shares of stock shall be taxable, the tax rate of each of said tax districts for said year, the proportion of the tax imposed by this chapter to which each of said tax districts is entitled, under the provisions hereof, and commanding him to collect same, and to pay to the proper officer in each of such districts the proportion of such tax to which it is entitled under the provisions of this chapter. The said county treasurer shall have the same powers to enforce the collection and payment of said tax as are possessed by the officers now charged by law with the collection of taxes, and the said county treasurer shall be entitled to a commission of one per centum for collecting and paying out said moneys, which commission shall be deducted from the gross amount of said tax before the same is distributed. In issuing their warrants to the collectors of taxes, the board of supervisors shall omit therefrom assessments of and taxes upon the shares of stock of banks and banking associations. Provided, that, in the city of New York the statement of the bank assessment and tax herein provided for shall be made by the board of tax commissioners of said city, on or before the fifteenth day of December in each year, and by them forthwith mailed to the respective banks and banking associations located in said city, and a certified copy thereof sent to the receiver of taxes of said city. The tax shall be paid by the respective banks in said city to the said receiver of taxes on or before the thirty-first day of December in said year, and said tax shall be collected by the said receiver of taxes and shall be by him paid into the treasury of said city to the credit of the general fund thereof. This section is not to be construed as an exemption of the real estate of banks or banking associations from taxation. No shares of stock of such banks and banking associations, by whomsoever held, shall be exempt from the tax hereby imposed.

§ 25. Individual banker, how assessed.

Every individual banker doing business under the laws of this state must report before the fifteenth day of June under oath to the assessors of the tax district in which any of the capital invested in such banking business is taxable, the amount of capital invested in such banking business in such tax district on the first day of June preceding. Such capital shall be assessed as personal property to the banker in whose name such business is carried on.

§ 26. Notice of assessment to bank or banking association.

The assessors of every tax district shall, within ten days after they have completed the assessment of the stock of a bank or banking association, give written notice to such bank or banking association of such assessment of the shares of its respective shareholders and no personal or other notice to such shareholders of such assessment is required.

§ 27. Reports of corporations.

The president or other proper officer of every moneyed or stock corporation deriving an income or profit from its capital or otherwise shall, on or before June fifteenth, deliver to one of the assessors of the tax district in which the company is liable to be taxed and, if such tax district is in a county embracing a portion of the forest preserve, to the comptroller of the state, a written statement specifying:

1. The real property, if any, owned by such company, the tax district in which the same is situated and, unless a railroad corporation, the sums actually paid therefor.
2. The capital stock actually paid in and secured to be paid in, excepting therefrom the sums paid for real property and the amount of such capital stock held by the state and by any incorporated literary or charitable institution, and
3. The tax district in which the principal office of the company is situated or in case it has no principal office, the tax district in which its operations are carried on.

Such statement shall be verified by the officer making the same to the effect that it is in all respects just and true. If such statement is not made within twenty days after the fifteenth day of June, or is insufficient, evasive or defective, the assessors may compel the corporation to make a proper statement by mandamus.

§ 72. Collection of taxes assessed against stocks in banks and banking associations.

Every bank or banking association shall retain any dividend until the delivery to the collector of the tax-roll and warrant of the current year, and within ten days after such delivery shall pay to such collector so much of such dividend as may be necessary to pay any unpaid taxes assessed on the stock upon which such dividend is declared. In case the owner of such stock resides in a place other than where the bank or banking association is located, the same power may be exercised in collecting the tax so assessed as is given in case a person has removed from a tax district in which the assessment was made. The tax so assessed shall be and remain a lien on the shares of stock against which it is assessed till the payment of such tax, and if the stock is transferred it shall be subject to such lien. The collector or county treasurer may foreclose such lien in any court of record, and collect from the avails of the sale of the stock the tax assessed against the same. In addition thereto, the same remedy may be had for the collection of the tax on such shares as is now provided by law for enforcing payment of personal tax against residents.

§ 180. Organization tax.

Every stock corporation incorporated under any law of this state shall pay to the state treasurer a tax of one-twentieth of one per centum upon the amount of capital stock which the corporation is authorized to have, and a like tax upon any subsequent increase. Provided that in no case shall such tax be less than five dollars. Such tax shall be due and payable upon the incorporation of such corporation or upon the increase of its capital stock. Except in the case of a railroad corporation neither the secretary of state nor county clerk shall file any certificate of incorporation or article of association, or give any certificate to any such corporation or association until he is furnished a receipt for such tax from the state treasurer, and no stock corporation shall have or exercise any corporate franchise or powers, or carry on business in this state until such tax shall have been paid. And in case of a decrease of capital stock, upon which the tax required by law has been paid, and a subsequent increase thereof, a tax shall be paid

only upon so much of such increase as exceeds the amount of capital stock upon which a tax has been before paid. In case of the consolidation of existing corporations into a corporation, such new corporation shall be required to pay the tax hereinbefore provided for only upon the amount of its capital stock in excess of the aggregate amount of capital stock of said corporations. This section shall not apply to state and national banks or to building, mutual loan, accumulating fund and co-operative associations. A railroad corporation need not pay such tax at the time of filing its certificate of incorporation, but shall pay the same before the public service commission shall grant a certificate as required by the railroad law, authorizing the construction of the road as proposed in its articles of association, and such certificate shall not be granted by the public service commission until it is furnished with a receipt for such tax from the state treasurer. If the board of railroad commissioners or public service commission shall have heretofore granted, or the public service commission shall hereafter grant, such certificate and upon an appeal from the determination of such board of railroad commissioners or public service commission, such certificate has been or may hereafter be denied the comptroller shall refund the amount of tax so paid to the railroad corporation or corporations by which such tax was paid, upon proof of payment being presented and appropriation being made therefor.

Amended by ch. 472 of 1910, and ch. 91 of 1911.

§ 182. Franchise tax on corporations.

For the privilege of doing business or exercising its corporate franchises in this state every corporation, joint-stock company or association, doing business in this state, shall pay to the state treasurer annually, in advance, an annual tax to be computed upon the basis of the amount of its capital stock, employed during the preceding year within this state, and upon each dollar of such amount. The measure of the amount of capital stock employed in this state shall be such a portion of the issued capital stock as the gross assets employed in any business within this state bear to the gross assets wherever employed in business. For purposes of taxation, the capital of a corporation invested in the

stock of another corporation shall be deemed to be assets located where the physical property represented by such stock is located. If the dividends upon the capital stock amount to six, or more than six per centum upon the par value of the capital stock, during any year ending with the thirty-first day of October, the tax shall be at the rate of one-quarter of a mill for each one per centum of dividends made or declared upon the par value of the capital stock during said year. If such dividend or dividends amount to less than six per centum on the par value of the capital stock, and

(1) The assets do not exceed the liabilities, exclusive of capital stock, or

(2) The average price at which such stock sold during said year did not equal or exceed its par value, or

(3) If no dividend was declared,

Then each dollar of the amount of capital stock employed in this state, determined as hereinbefore provided, shall be taxed at the rate of three-fourths of one mill. If such dividend or dividends amount to less than six per centum on the par value of the capital stock, and

(1) The assets exceed the liabilities, exclusive of capital stock, by an amount equal to or greater than the par value of the capital stock, or

(2) The average price at which such stock sold during said year is equal to or greater than the par value,

Then the amount of capital stock, determined as hereinbefore provided to be employed in this state shall be taxed at the rate of one and one-half mills on each dollar of the valuation of the capital stock employed in this state, but such valuation shall not be less than

(1) The par value of such stock,

(2) The difference between the assets and liabilities, exclusive of capital stock,

(3) The average price at which such stock sold during said year.

If such corporation, joint-stock company or association shall have more than one kind of capital stock, and upon one of such kinds of stock a dividend or dividends amounting to six or more than six per centum upon the par value thereof, has been made

or declared, and upon the other no dividend has been made or declared, or the dividend or dividends made or declared thereon amount to less than six per centum upon the par value thereof, then the tax shall be at the rate of one-quarter of a mill for each one per centum of dividends made or declared upon the capital stock upon the par value of which the dividend or dividends made or declared amount to six or more than six per centum, and in addition thereto a tax shall be charged upon the capital stock

(1) Upon which no dividend was made or declared, or

(2) Upon which the dividend or dividends made or declared did not amount to six per centum upon the par value,

At the rate as hereinbefore provided for the taxation of capital stock upon which no dividend was made or declared, or upon which the dividend or dividends made or declared did not amount to six per centum on the par value.

All corporations not taxable under the preceding paragraphs of this section shall be taxed in an amount not less than would be produced by an assessment of one and one-half mills on each one dollar of the actual value of its capital stock, determined to be employed in this state as hereinbefore provided, or one and one-half mills upon each dollar of such capital stock at the average price at which said stock sold during the said year.

§ 183. Certain corporations exempt from tax on capital stock.

Banks, savings banks, institutions for savings, title guaranty, insurance or surety corporations, every trust company incorporated, organized or formed, under, by or pursuant to a law of this state, and any company authorized to do a trust company business, solely or in connection with any other business, under a general or special law of this state, laundering corporations, manufacturing corporations to the extent only of the capital actually employed in this state in manufacturing, and in the sale of the product of such manufacturing, mining corporations, wholly engaged in mining ores within this state, agricultural and horticultural societies or associations, and corporations, joint-stock companies or associations owning or operating elevated railroads or surface railroads not operated by steam or formed for supply-

ing water or gas for electric or steam heating, lighting or power purposes, and liable to a tax under sections one hundred and eighty-five and one hundred and eighty-six of this chapter, shall be exempt from the payment of the taxes prescribed by section one hundred and eighty-two of this chapter. But such a laundering, manufacturing or mining corporation shall not be exempted from the payment of such tax, unless at least forty per centum of the capital stock of such corporation is invested in property in this state and used by it in its laundering, manufacturing or mining business in this state.

Amended by ch. 785 of 1897, ch. 558 of 1901, and ch. 474 of 1906.

§ 188. Franchise tax on trust companies.

Every trust company incorporated, organized or formed under, by or pursuant to a law of this state, and any company authorized to do a trust company's business solely or in connection with any other business, under a general or special law of this state, shall pay to the state annually for the privilege of exercising its corporate franchise or carrying on its business in such corporate or organized capacity, an annual tax which shall be equal to one per centum on the amount of its capital stock, surplus, and undivided profits.

Amended by ch. 535 of 1901.

§ 189. Franchise tax on savings banks.

Every savings bank incorporated, organized or formed under, by or pursuant to a law of this state, shall pay to the state annually for the privilege of exercising its corporate franchise or carrying on its business in such corporate or organized capacity, an annual tax which shall be equal to one per centum on the par value of its surplus, and undivided earnings.

Added by ch. 117 of 1901.

§ 190. Purchase of state bonds; credit to be given.

Every corporation, company or association required by section one hundred and eighty-seven, one hundred and eighty-eight, or one hundred and eighty-nine of this chapter, to pay to the state

an annual tax equal to a percentage of its gross premiums, capital, stock, surplus, undivided profits or undivided earnings, or one or more, for the privilege of exercising its corporate franchise or carrying on its business in such corporate or organized capacity, which shall own any of the bonds of the state of New York, shall have credited to it annually to apply upon or in lieu of the payment of such tax an amount equal to one per centum of the par value of all such bonds of the state, bearing interest at a rate not exceeding three per centum per annum, owned by such corporation, company or association, and registered in its name or registered in the name of a public department, a public officer or officers of this state, or of any other state, or of the United States, in trust for such corporation, company or association, on the thirtieth day of June prior to the date when such tax shall become due and payable; provided, however, that there shall in no case be credited to any such corporation, company or association an amount in excess of the amount due to the state from such corporation, company or association for taxes payable to the state under this chapter for the fiscal year for which such credit is given; and further provided that any such credit so allowed under this section shall not bear interest.

Amended by L. 1913, cha. 357, 794.

§ 181. Tax upon foreign bankers.

Every foreign banker doing business in this state, shall annually pay to the treasurer a tax of five per centum on the amount of interest or compensation of any kind earned and collected by him on money loaned, used or employed in this state by such banker. The term, doing a banking business, as used in this section, means doing such business as a corporation may be created to do under article three of the banking law, or doing any business which a corporation is authorized by such article to do. The term, foreign banker doing a banking business in this state, as used in this section, includes:

1. Every foreign corporation doing a banking business in this state, except a national bank.

2. Every unincorporated company, partnership or association of two or more individuals, organized under or pursuant to the laws of another state or country, doing a banking business in this state.

3. Every other unincorporated company, partnership or association of two or more individuals, doing a banking business in this state, if the members thereof, owning more than a majority interest therein, or entitled to more than one-half of the profits thereof, or who would, if it were dissolved, be entitled to more than one-half of the net assets thereof, are not residents of this state.

4. Every non-resident of this state doing a banking business in this state, in his own name and right only.

Amended by ch. 500 of 1900.

§ 192. Reports of corporations.

Corporations liable to pay a tax under this article shall report as follows:

1. Corporations paying franchise tax. Every corporation, association or joint-stock company liable to pay a tax under section one hundred and eighty-two of this chapter shall, on or before November fifteenth in each year, make a written report to the comptroller of its condition at the close of its business on October thirty-first preceding, stating the amount of its authorized capital stock, the amount of stock paid in, the date and rate per centum of each dividend declared by it during the year ending with such day, the entire amount of the capital of such corporation, and the capital employed by it in this state during such year.

2. Transportation and transmission corporations. Every transportation or transmission corporation, joint-stock company or association liable to pay an additional tax under section one hundred and eighty-four of this chapter, shall also, on or before August first in each year, make a written report to the comptroller of its condition at the close of its business on June thirtieth preceding, stating the amount of its gross earnings from all sources and the amount of its gross earnings from its transportation or transmission business originating and terminating within this state.

3. Elevated and surface railroad corporations. Every corporation, joint-stock company or association liable to pay a tax under section one hundred and eighty-five of this chapter, shall, on or before August first of each year, make a written report to the comptroller of its condition at the close of its business on June thirtieth preceding, stating the amount of its gross earnings from business done in this state, the amount of dividends of every nature declared or paid during the year ending June thirtieth, the authorized capital of the company and the amount of capital stock actually issued and outstanding.

4. Water-works, gas, electric, steam-heating, lighting and power corporations. Every corporation, joint-stock company or association liable to pay a tax under section one hundred and eighty-six of this chapter, shall, on or before December first of each year, make a written report to the comptroller of its condition at the close of its business on October thirty-first preceding, stating the amount of its gross earnings from business done in this state, the amount of dividends of every nature declared or paid during the year ending with October thirty-first, the authorized capital of the company and the amount of capital stock actually issued and outstanding.

5. Insurance corporations. Every insurance corporation liable to pay a tax under section one hundred and eighty-seven of this chapter, shall, on or before March first in each year, make a written report to the comptroller of its condition at the close of its business on December thirty-first preceding, stating the gross amount of all premiums referred to in section one hundred and eighty-seven of this chapter, received during the preceding calendar year on business done thereby in this state during the year ending with such day and at all times prior thereto, whether the premiums were in money or in the form of notes, credits or other substitutes for money.

6. Foreign bankers. Every foreign banker liable to pay a tax under section one hundred and ninety-one of this chapter shall, on or before February first in each year, make a written report to the comptroller of the condition of his business on December thirty-first preceding, stating the amount of tax for which he is liable under this article, and giving in detail the facts required

by the last preceding section for the purpose of ascertaining and computing the same.

7. Trust companies. Every company liable to pay a tax under section one hundred and eighty-eight of this chapter shall, on or before August first in each year, make a written report to the comptroller of its condition at the close of business on June thirtieth preceding, separately stating the amount of its capital stock, the amount of its surplus, and the amount of its undivided profits, and containing such other data, information or matter as the comptroller may require.

8. Savings banks. Every savings bank liable to pay a tax under section one hundred and eighty-nine of this chapter, shall on or before August first in each year, make a written report to the comptroller of its condition at the close of business on June thirtieth preceding, stating the par value of its surplus, and undivided earnings and containing such other data, information or matter as the comptroller may require. (Former sec. 189 without change of substance.)

PENAL LAW.

§ 290. Misconduct of officers, directors, trustees or employees of banking corporations.

A director of a corporation, organized under the laws of this state, having banking powers, who concurs in any vote or act of the directors of such corporation, or any of them, by which it is intended to make a loan or discount to any director of such corporation, or upon paper upon which any such director is liable or responsible to an amount exceeding the amount allowed by statute; or

Any director, trustee, officer or employee of any corporation to which the banking law is applicable who makes or maintains, or attempts to make or maintain, a deposit of such corporation's funds with any other corporation on condition, or with the understanding, express or implied, that the corporation receiving such deposit make a loan or advance, directly or indirectly, to any director, trustee, officer or employee of the corporation so making or maintaining or attempting to make or maintain such deposit; or

Any officer or employee of any corporation to which the bank-

ing law is applicable who intentionally conceals from the directors or trustees of such corporation any discounts or loans made by it between the regular meetings of its board of directors or trustees, or the purchase of any securities or the sale of any of its securities during the same period, or knowingly fails to report to its board of directors or trustees when required to do so by law, all discounts or loans made by it and all securities purchased or sold by it between the regular meetings of its board of directors or trustees; or

Any director, officer or employee of a bank or trust company who makes any agreement, express or implied, before or at the time of issuing a certificate of deposit, by which its holder may demand or receive payment thereof in advance of its maturity.

Is guilty of a misdemeanor.

Nothing in this section shall render any loan made by the directors of any such corporation, in violation thereof, invalid.

Amended by L. 1910, ch. 398.

§ 291. Sale or hypothecation of bank notes by officer.

An officer or agent of any corporation having banking powers, who sells, or causes or permits to be sold, any bank notes of such corporation, or pledges or hypothecates, or causes or permits to be pledged or hypothecated, with any other corporation, association or individual, any such notes, as a security for a loan or for any liability of such corporation, is punishable by imprisonment in a county jail not exceeding one year, or by a fine not exceeding five thousand dollars, or both.

§ 292. Officer of bank putting excessive number of its notes in circulation.

An officer or agent of any corporation having banking powers, who issues or puts in circulation, or causes or permits to be issued or put in circulation, the bank notes of such corporation in an amount, which, together with previous issues, leaves in circulation or outstanding a greater amount of notes than such corporation is allowed by law to issue and circulate, is punishable by imprisonment in a county jail not exceeding one year, or by a fine not exceeding five thousand dollars, or both.

§ 293. Officer or agent of banking corporation making guaranty or indorsement, in its behalf, beyond the legal limit.

An officer or agent of any banking corporation, who makes or delivers any guaranty or indorsement on behalf of such corporation, whereby it may become liable upon any of its discounted notes, bills or obligations, in a sum beyond the amount of loans and discounts which such corporation may legally make, is guilty of a misdemeanor.

§ 294. Bank officer overdrawing his account or asking for or receiving commissions or gratuities from persons procuring loans or making overdrafts of their accounts.

An officer, director, agent, teller, clerk or employee of any bank, banking association, savings bank or trust company, who, either,

1. Knowingly overdraws his account with such bank, banking association, savings bank or trust company, and thereby obtains the money, notes or funds of any such bank, banking association, savings bank or trust company; or

2. Asks or receives, or consents or agrees to receive, any commission, emolument, gratuity or reward, or any promise of any commission, emolument, gratuity or reward, or any money, property or thing of value or of personal advantage for procuring or endeavoring to procure for any person, firm or corporation, any loan from, or the purchase or discount of any paper, note, draft, check or bill of exchange by any such bank, banking association, savings bank or trust company, or for permitting any person, firm or corporation to overdraw any account with such bank, banking association, savings bank or trust company, is guilty of a misdemeanor.

Amended by L. 1905, ch. 248.

§ 295. Receiving deposits in insolvent bank.

An officer, agent, teller or clerk of any bank, banking association or savings bank, and every individual banker or agent, and every private banker or agent and any teller or clerk of an individual banker, or of a private banker or any officer, agent or clerk of any corporation transacting any part of the business which a banking corporation is authorized by law to transact who receives any deposit, knowing that such bank or association or banker or corporation is insolvent, is guilty of a misdemeanor, if the amount or

value of such deposit be less than twenty-five dollars; if the amount or value of such deposit be twenty-five dollars or over, such person shall be guilty of a felony, punishable by imprisonment for not less than one nor more than five years, or by a fine of not less than five hundred nor more than three thousand dollars, or by both.

Amended by L. 1914, ch. 383. In effect April 15, 1914.

§ 296. Unlawful investments by officers of savings banks.

Any officer or trustees of a savings bank authorizing or making any investment of the funds of the bank in securities, not authorized by law, is guilty of a misdemeanor.

§ 297. Misconduct by directors of monied corporations.

Every director of a monied corporation who:

1. In case of the fraudulent insolvency of such corporation, shall have participated in such fraud; or

2. Willfully does any act as such director which is expressly forbidden by law, or willfully omits to perform any duty imposed upon him as such director by law,

Is guilty of a misdemeanor, if no other punishment is prescribed therefor by law.

The insolvency of a monied corporation is deemed fraudulent unless its affairs appear upon investigation to have been administered fairly, legally and with the same care and diligence that agents receiving a compensation for their services are bound, by law, to observe.

§ 298. Misconduct by banks and bankers.

Any moneyed corporation or individual banker authorized to carry on the business of banking under the laws of this state who:

1. Receives, pays out, gives or offers in payment as money to circulate, or who attempts to circulate as money, any bill, note or other evidence of debt issued or purporting to have been issued by any corporation or individual, situated or residing without this state, and which bill, note or other evidence of debt shall, upon any part thereof, purport to be payable or redeemable at any place or by any corporation or individual within this state; or,

2. Issues, utters or circulates as money, or in any way, directly or indirectly, aids or assists in the issuing, uttering or circulating as money within this state, of any bank bill, note or other evidence

of debt in the similitude of a bank note issued or purporting to have been issued by any corporation or individual situated or residing without this state; or procures or receives, in any manner whatever, any such bank bill, note or other evidence of debt with intent to issue, utter or circulate, or with intent to aid in issuing, uttering or circulating the same as money within this state; or

3. Directly or indirectly lends or pays out for paper discounted or purchased any bank bill, note or other evidence of debt, which is not received at par by such corporation or banker for debts due such corporation or banker; or,

4. Issues or puts in circulation any bank bill or note of any such corporation or banker, unless the same shall be made payable on demand and without interest, except bills of exchange on foreign countries or places beyond the limits or jurisdiction of the United States, and except certificates of deposit payable on presentation, with or without interest, to bearer or to the order of a person named therein, or certificates of deposit payable, with or without interest, to the order of a person named therein showing the amount of the deposit, the date of issue and the date when due; but such certificates shall not be issued except as representing money actually on deposit.

Is guilty of a misdemeanor. Nothing in this section contained shall be construed to prohibit any such corporation or banker from receiving and paying out such foreign bank bills as they shall receive at par in the ordinary course of their business, or to prohibit such corporation or banker from receiving foreign notes from their dealers and customers in the regular and usual course of their business, at a rate of discount not exceeding that which is or shall be at the time fixed by law, for the redemption of the bills of the banks of this state at their agencies, or from obtaining from the corporations, associations or individuals by which such foreign notes are made, the payment or redemption thereof.

Amended by ch. 692 of 1892.

Subd. 4 amended by chap. 398 of 1910.

§ 299. Unlawful discount of bills of foreign banks.

Any person, association or corporation within the state who, directly or indirectly, on any pretense whatever, procures or receives

or offers to receive from any corporation or person any bank bill or note or other evidence of debt in the similitude of a bank note issued or purporting to have been issued by any corporation or individual, situated or residing without this state, at a greater rate of discount than is or shall be at the time fixed by law for the redemption of the bills of the banks of this state at their agencies, is guilty of a misdemeanor.

§ 300. Misconduct by officers of banking department.

The superintendent of banks, or any officer in the banking department who countersigns bills or notes for any person or corporation exceeding the value of the interest-bearing stocks of the state of New York or of the United States, or other securities deposited with such superintendent by such person or corporation on account thereof, is guilty of a felony, punishable by a fine of not less than five thousand dollars or by imprisonment for not less than five years, or by both.

§ 301. Using dies and plates of extinct state bank.

Any person who uses the dies and plates of a state bank in the manufacture of notes and bills, after such bank has become a national bank in pursuance of law, is guilty of a misdemeanor.

§ 302. Unauthorized use of the term "bank."

Any person engaged in banking in this state, not subject to the supervision of the superintendent of banks, and not required by law to report to such superintendent, who was not engaged in such banking before May 23, 1885, who

1. Uses an office sign at the place where such business is transacted, having thereon any artificial or corporate name, or other words, indicating that such place or office is the place or office of a bank; or,

2. Uses or circulates any letter-heads, bill-heads, blank notes, blank receipts, certificates, circular or any written or printed

paper whatever, having thereon any artificial or corporate name, or other word or words indicating that such business is the business of a bank;

Is guilty of a misdemeanor.

§ 303. False statements or rumors as to banking institution.

Any person who willfully and knowingly makes, circulates or transmits to another or others any statement or rumor, written, printed, or by word of mouth, which is untrue in fact and is directly or by inference derogatory to the financial condition or affects the solvency or financial standing of any bank, private banker, savings bank, bank association, building and loan association or trust company doing business in this state, or who knowingly counsels, aids, procures or induces another to start, transmit or circulate any such statement or rumor, is guilty of a misdemeanor punishable by a fine of not more than one thousand dollars or by imprisonment for not more than one year, or both.

Added by L. 1912, ch. 211.

Amended by L. 1914, ch. 112. In effect April 4, 1914.

§ 304. Falsification of books, reports or statements of corporations subject to the banking law, by an officer, director, trustee, employee or agent thereof.

Any officer, director, trustee, employee or agent of any corporation to which the banking law is applicable who makes a false entry in any book, report or statement of such corporation with intent to deceive any officer, director or trustee thereof, or any agent or examiner lawfully appointed to examine into its condition or into any of its affairs, or any public officer, office or board to which such corporation is required by law to report, or which has authority by law to examine into its condition or into any of its affairs, or who, with like intent, willfully omits to make a true entry of any material particular pertaining to the business of such corporation in any book, report or statement of such corporation made, written or kept by him or under his direction, is guilty of a felony.

Added by L. 1912, ch. 208. In effect September 1, 1912.

§ 305. Abstraction or misappropriation of money, funds or property, or misapplication of credit of corporations to which the banking law is applicable, by an officer, director, trustee, employee or agent thereof.

Any officer, director, trustee, employee or agent of any corporation to which the banking law is applicable, who abstracts or willfully misapplies any of the money, funds or property of such corporation, or willfully misapplies its credit, is guilty of a felony. Nothing in this section shall be deemed or construed to repeal, amend or impair any existing provision of law prescribing a punishment for any such offense.

Added by L. 1913, ch. 102. In effect September 1, 1913.

§ 660. Frauds in the organization of corporations.

A person who:

1. Without authority subscribes the name of another to or inserts the name of another in any prospectus, circular or other advertisement or announcement of any corporation or joint-stock association existing or intended to be formed with intent to permit the same to be published, and thereby to lead persons to believe that the person whose name is so subscribed is an officer, agent, member or promoter of such corporation or association; or,

2. Signs the name of a fictitious person to any subscription for or agreement to take stock in any corporation, existing or proposed; or,

3. Signs to any such subscription or agreement the name of any person, knowing that such person does not intend in good faith to comply with the terms thereof, or under any understanding or agreement, that the terms of such subscription or agreement are not to be complied with or enforced,

Is guilty of a misdemeanor.

§ 661. Frauds in procuring organization of corporations.

An officer, agent or clerk of a corporation, or of persons proposing to organize a corporation, or to increase the capital stock of a corporation, who knowingly exhibits a false, forged or altered book, paper, voucher, security or other instrument of evidence to any public officer or board authorized by law to examine the organization of such corporation, or to investigate its affairs, or to

allow an increase of its capital, with intent to deceive such officer or board in respect thereto, is punishable by imprisonment in a state prison not exceeding ten years.

§ 662. Fraudulent issue of stocks and bonds.

An officer, agent or other person in the service of any joint-stock company or corporation formed or existing under the laws of this state, or of the United States or of any state or territory thereof, or of any foreign government or country, who willfully and knowingly, with intent to defraud:

1. Sells, pledges or issues, or causes to be sold, pledged or issued, or signs or executes, or causes to be signed or executed with intent to sell, pledge or issue, or causes to be sold, pledged or issued, any certificate or instrument purporting to be a certificate or evidence of the ownership of any share or shares of such company or corporation, or any bond or evidence of debt, or writing purporting to be a bond or evidence of debt of such company or corporation, without being first thereto duly authorized by such company or corporation, or contrary to the charter or laws under which such corporation or company exists, or in excess of the power of such company or corporation or of the limit imposed by law or otherwise upon its power to create or issue stock or evidences of debt; or,

2. Reissues, sells, pledges or disposes of, or causes to be re-issued, sold, pledged or disposed of, any surrendered or canceled certificates, or other evidence of the transfer or ownership of any such share or shares,

Is punishable by imprisonment for a term not exceeding seven years, or by a fine not exceeding three thousand dollars, or by both.

§ 663. Acting for foreign corporations not authorized to do business in this state.

Any person, or corporation, who,

1. Acts as agent or representative of any mortgage, loan or investment corporation or building and mutual loan corporation or association or co-operative savings and loan association organized outside of this state, while such mortgage, loan or investment corporation or building and mutual loan corporation or associa-

tion or co-operative savings and loan association shall not be authorized under a license of the superintendent of banks to do business in this state; or,

2. Acts as agent or representative in this state of a foreign corporation, other than a moneyed corporation, with the words "trust," "bank," "banking," "insurance," "assurance," "indemnity," "guarantee," "guaranty," "savings," "investment," "loan," "benefit," or any other words or terms indicating, representing or holding out such company to be a moneyed corporation as a part of its name or corporate title, or who, in connection with such corporation or otherwise, shall put forth any sign containing said name, or who shall advertise or publish the said company as doing business in this state, directly or indirectly, through agents or otherwise, while such company shall not be authorized under a certificate procured from the secretary of state pursuant to section fifteen of the general corporation law to do business in this state, is guilty of a misdemeanor.

§ 664. Misconduct of officers and directors of stock corporations.

A director of a stock corporation, who concurs in any vote or act of the directors of such corporation, or any of them, by which it is intended:

1. To make a dividend, except from the surplus profits arising from the business of the corporation, and in the cases and manner allowed by law; or,

2. To divide, withdraw, or in any manner pay to the stockholders, or any of them, any part of the capital stock of the corporation or to reduce such capital stock without the consent of the legislature; or,

3. To discount or receive any note or other evidence of debt in payment of an installment of capital stock actually called in, and required to be paid, or with intent to provide the means of making such payment; or,

4. To receive or discount any note or other evidence of debt with intent to enable any stockholder to withdraw any part of the money paid in by him on his stock; or,

5. To apply any portion of the funds of such corporation, except surplus profits, directly or indirectly, to the purchase of shares of its own stock,

Is guilty of a misdemeanor.

An officer or director of a stock corporation who:

6. Issues, participates in issuing, or concurs in a vote to issue any increase of its capital stock beyond the amount of the capital stock thereof, duly authorized by or in pursuance of law; or,

7. Sells, or agrees to sell, or is directly or indirectly interested in the sale of any share of stock of such corporation, or in any agreement to sell the same, unless at the time of such sale or agreement he is an actual owner of such share,

Is guilty of a misdemeanor, punishable by imprisonment for not less than six months, or by a fine not exceeding five thousand dollars, or by both.

§ 665. Misconduct of directors, officers, agents and employees of corporations.

A director, officer, agent or employee of any corporation or joint-stock association who:

1. Knowingly receives or possesses himself of any of its property otherwise than in payment for a just demand, and with intent to defraud, omits to make or to cause or direct to be made a full and true entry thereof in its books and accounts; or,

2. Makes or concurs in making any false entry, or concurs in omitting to make any material entry in its books or accounts; or,

3. Knowingly (a), concurs in making or publishing any written report, exhibit or statement of its affairs or pecuniary condition containing any material statement which is false, or (b), omits or concurs in omitting any statement required by law to be contained therein; or,

4. Having the custody or control of its books, willfully refuses or neglects to make any proper entry in the stock book of such corporation as required by law, or to exhibit or allow the same to be inspected, and extracts to be taken therefrom by any person entitled by law to inspect the same, or take extracts therefrom; or,

5. If a notice of an application for an injunction affecting the property or business of such joint-stock association or corporation is served upon him, omits to disclose the fact of such service and the time and place of such application to the other directors, officers and managers thereof; or,

6. Refuses or neglects to make any report or statement lawfully required by a public officer,
Is guilty of a misdemeanor.

§ 666. Unlawful use of certain titles in connection with corporate name.

Any person, association or corporation other than a moneyed corporation, who shall within this state directly or indirectly, or through agents or representatives transact business under, or in anywise use a corporate name or a corporate title with the words "trust," "bank," "banking," "insurance," "assurance," "indemnity," "guarantee," "guaranty," "savings," "investment," "loan," "benefit," as a part of such name or title, is guilty of a misdemeanor; provided, however, that any domestic corporation, other than a moneyed corporation, heretofore duly organized and heretofore duly authorized by law to use and on April twenty-ninth, nineteen hundred and four, lawfully using either or any of such words as a part of its lawful corporate title, may lawfully continue to use such corporate title, provided and if it, being a corporation other than a moneyed corporation, shall, wherever the name shall be printed, written, engraved or displayed, add, in legible English characters, of substantially the same size and style as the name, directly under the said name or immediately in connection therewith, wherever so used, the words "not a moneyed corporation."

§ 667. Presumption of knowledge of corporate condition and business and of assent thereto by directors; definitions.

It is no defense to a prosecution for a violation of the provisions of this article and article twenty-six, that the corporation is a foreign corporation, if it carries on business or keeps an office therefor in this state.

The term "director" as used in this article and article twenty-six includes any of the persons having, by law, the direction or management of the affairs of a corporation, by whatever name described.

A director of a corporation or joint-stock association is deemed

to have such a knowledge of the affairs of the corporation or association as to enable him to determine whether any act, proceeding or omission of its directors is a violation of this article and article twenty-six. If present at a meeting of the directors at which any act, proceeding or omission of such directors in violation of this article and article twenty-six occurs, he must be deemed to have concurred therein, unless he at the time causes or in writing requires his dissent therefrom to be entered on the minutes of the directors. If absent from such meeting, he must be deemed to have concurred in any such violation, if the facts constituting such violation appear on the record or minutes of the proceedings of the board of directors, and he remains a director of the corporation for six months thereafter without causing or in writing requiring his dissent from such violation to be entered on such record or minutes.

§ 668. Misconduct at corporate elections.

Any person who:

1. Being entitled to vote at any meeting of the stockholders or bondholders or both of a stock corporation, sells his vote, or who issues a proxy to vote to any person for any sum of money or thing of value, except as expressly authorized by law; or,

2. Acts as an inspector of election at any such meeting and violates an oath taken by him in pursuance of law as such inspector, or violates the provisions of an oath required by law to be taken by him as such inspector, or is guilty of any dishonest or corrupt conduct as such inspector,

Is guilty of a misdemeanor.

§ 1293b. Obtaining property or credit by use of false statement.

Any person

1. Who shall knowingly make or cause to be made, either directly or indirectly, or through any agency whatsoever, any false statement in writing, with intent that it shall be relied upon, respecting the financial condition, or means or ability to pay, of himself, or any other person, firm or corporation, in whom he is interested, or for whom he is acting, for the purpose of procuring in any form whatsoever, either the delivery of personal property, the payment of cash, the making of a loan or credit, the extension of a credit, the discount of an account receivable, or the making, acceptance, discount, sale or indorsement of a bill of exchange, or promissory note, for the benefit of either himself or of such person, firm or corporation; or

2. Who, knowing that a false statement in writing has been made, respecting the financial condition or means or ability to pay, of himself, or such person, firm or corporation, in which he is interested, or for whom he is acting, procures, upon the faith thereof, for the benefit either of himself, or of such person, firm or corporation, either or any of the things of benefit mentioned in subdivision one of this section; or

3. Who, knowing that a statement in writing has been made, respecting the financial condition or means or ability to pay, of himself or such person, firm or corporation, in which he is interested, or for whom he is acting, represents on a later day, either orally or in writing, that such statement theretofore made, if then again made on said day, would be then true, when in fact, said statement if then made would be false, and procures upon the faith thereof, for the benefit either of himself or of such person, firm or corporation, either or any of the things of benefit mentioned in subdivision one of this section,

Shall be guilty of misdemeanor and punishable by imprisonment for not more than one year or by a fine of not more than one thousand dollars, or both fine and imprisonment.

Added by L. 1912, ch. 340. In effect September 1, 1912.

§ 2400. Taking security upon certain property for usurious loans.

A person who takes security, upon any household furniture, sewing machines, plates or silverware in actual use, tools or implements of trade, wearing apparel or jewelry, for a loan or forbearance of money, or for the use or sale of his personal credit, conditioned upon the payment of a greater rate than six per centum per annum or, who as security for such loan, use or sale of personal credit as aforesaid, makes a pretended purchase of such property from any person, upon the like condition, and permits the pledger to retain the possession thereof is guilty of a misdemeanor.

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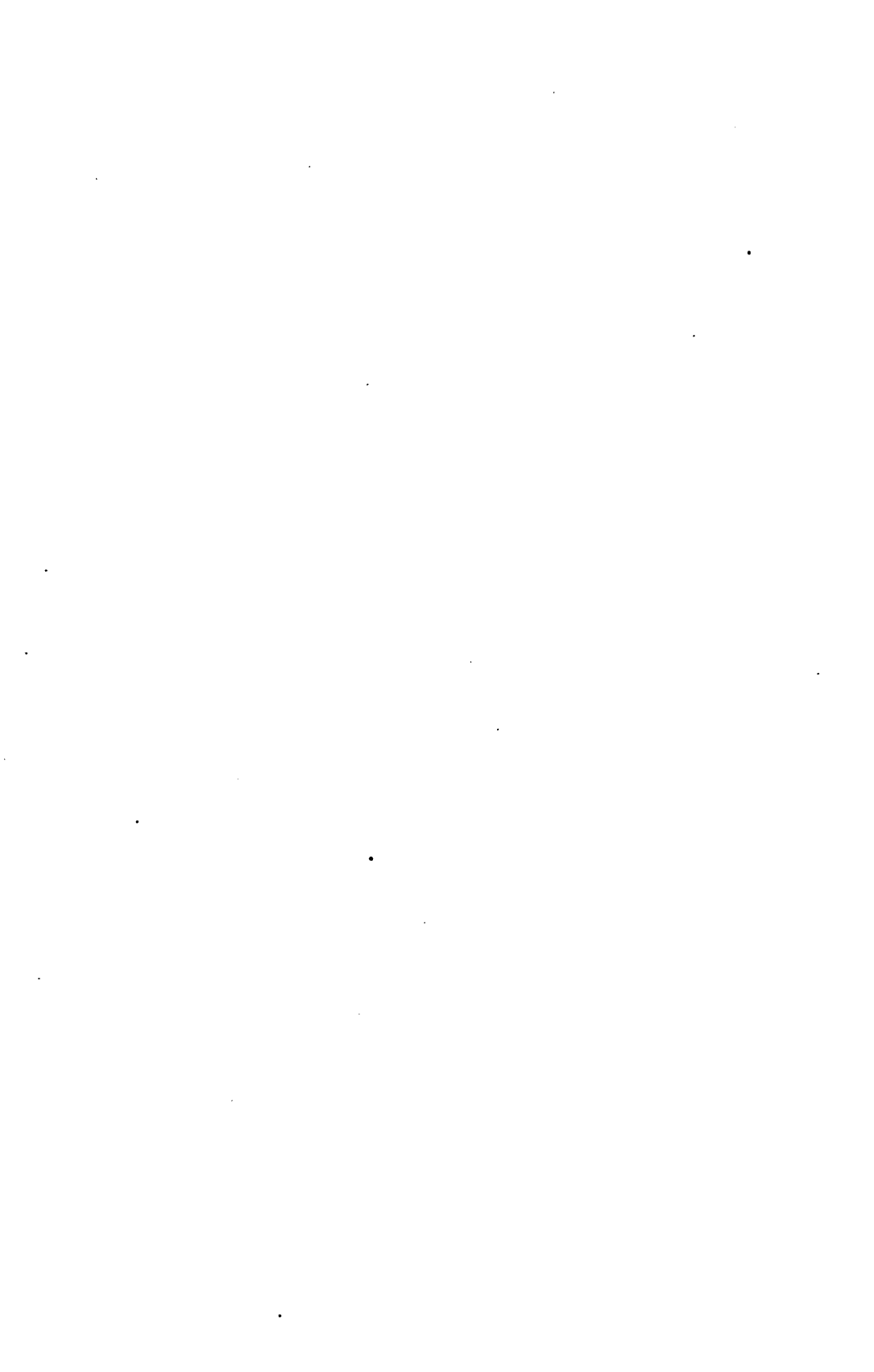
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